

<b>Title:</b> The Payment Services and Electronic Money (Amendment) Regulations 2020 <b>SI No:</b> 2020/1275 <b>Other departments or agencies:</b> <a href="#">Click here to enter text.</a> <b>Contact for enquiries:</b> Toby Churchley	<b>De minimis assessment</b>
	<b>Date:</b> 30/10/2020
	<b>Type of regulation:</b> EU
	<b>Date measure comes into force:</b> 07/12/2020
<b>Cost of Preferred (or more likely) Option</b>	<b>Net cost to business per year</b> (EANDCB in 2019 prices) £0

### 1. What is the problem under consideration? Why is government intervention necessary?

The payments and e-money sectors have expanded rapidly over the last decade, with payments and e-money institutions (PI/EMI) alone now holding more than £17bn of assets belonging to UK consumers. Recent administration cases involving these types of firms have taken years to resolve with consumers left without access to their money for a prolonged period and receiving reduced monies after the cost of distribution. In six recent cases of PIs/EMIs becoming insolvent (three in 2018), only one has so far returned client assets to consumers.

### 2. What are the policy objectives and the intended effects?

This legislation will provide an enabling power to create a Special Administration Regime for payments and e-money firms (pSAR). The pSAR would give insolvency practitioners (IPs) administering insolvent PIs/EMIs a tool-kit to keep the firm operational whilst prioritising the return of client assets. This would lead to fewer disruptive insolvencies whilst lowering the cost of distribution. The pSAR aims to replicate the Special Administration Regime for Investment Firms (IBSAR) which has been in place since 2011.

### 3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

HMT considered other policy options including an expansion of safeguarding requirements. However, this would require primary legislation which will not be deliverable for a number of years. The pSAR can begin to mitigate consumer harms of failures in the near term.

### 4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

To do this, please set out the following:

- What will businesses have to do differently?

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PIs/EMIs will not have to act differently.

IPs will have new tools to use when administering the insolvency of PIs/EMIs. These tools will allow them to reduce costs by having a bar date for claims, creating continuity of supply arrangements to keep the firms' processes operating and providing greater flexibility in using the firms' assets.

- How many businesses will this impact per year?

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This measure will only be used when a PI/EMI goes into insolvency and when an IP is appointed to administer an insolvency involving a PI/EMI. Although there are approximately 1,200 authorised PIs/EMIs, the number of insolvencies varies significantly based on market conditions and firm specific issues. If each insolvency resulted in a different IP being appointed, then it would be possible for multiple IPs to be affected. However, there are only a limited number of IPs capable of resolving complex financial services firms such as these. Even in a year with a significant number of insolvencies, the number of IPs needing to familiarise themselves with these regulations is likely to be fewer than 10.

- What is the direct cost/benefit per business per year?



The [full Impact Assessment \(IA\) for the 2011 IBSAR](#) estimated the direct costs to businesses per year to be zero and the direct benefits to business to be unquantifiable. The pSAR is designed to replicate the IBSAR as far as possible – the objectives and processes are almost identical, with primary differences being definitional regarding the types of assets PIs/EMIs are likely to hold in comparison to investment firms. We believe that the pSAR will therefore also have a direct cost to businesses of zero along with unquantifiable benefits.

The below sets out the reasoning used in the IBSAR IA for there being no direct costs to businesses, and why this will also be the case in the pSAR:

- There are no significant ongoing or one-off direct costs associated with the IBSAR.
  - No novel elements with ongoing or one-off costs are planned for the pSAR, excluding familiarisation costs (see further below).
- None of the IBSAR's objectives entail any direct costs. It was acknowledged that unsecured creditors might indirectly be affected by the objective to return client assets as quickly as possible. This was, however, considered unlikely because the IBSAR will speed up the agreement of unsecured claims, expedite the distribution process for unsecured creditors and reduce the level of unsecured claims.
  - The pSAR's objectives will be the same as the IBSAR.
- The cost of the bar date would be on the client or third party to submit a claim for the asset, as they may need to submit a claim more quickly than they otherwise would. However, this is a process that is usually undertaken in complex insolvencies anyway, so the costs are likely to be negligible. The IBSAR IA further states that the potential costs of a client having an unsecured shortfall claim rather than a proprietary claim due to being a late claimant is unquantifiable as the cost depends on the size of the shortfall and whether the unsecured claim is eventually paid in full.
  - The pSAR bar date process will be functionally the same as the IBSAR.
- While the IBSAR may prevent clients from putting in tracing claims to their assets, and therefore could lead to clients bearing shortfalls that belong to another client, the cost of this proposal is not quantifiable as it depends on the circumstances of the administration, on how large the shortfall is and on the amount of assets held.
  - The pSAR will have similar arrangements for shortfalls as the IBSAR, however this will not create a cost for businesses.
- Giving the FCA power of direction in the IBSAR may in certain cases mean that the financial authorities are more involved in administration cases than usual and could cause some additional burden to IPs. The IA states that these costs are

unquantifiable and that it is expected that the cost would be mitigated by the positive impacts of the IBSAR.

- i. The FCA will also have powers of direction in the pSAR. A high end estimate assuming an additional 35 hours of work for 4 IP compliance personnel at £48 per hour – a potential cost of £6,720 per insolvency for additional interaction with the FCA.
- f. The cost to suppliers of the continuity of service arrangements in the IBSAR is negligible because the supplier can stop providing services if: any charges with respect to their supply are unpaid within 28 days; the administrator consents to the termination of supply or; if the court consents to the termination of supply due to the supplier suffering hardship were they to continue to supply the insolvent firm.
  - i. The continuity of service provisions will have the same functionality in the pSAR as in the IBSAR.

The cost to IPs of familiarising themselves with these tools will be negligible given it broadly mirrors the existing IBSAR, which they are already familiar with. If a new IP without an understanding of the IBSAR were to take on a PI/EMI insolvency, then based on [FCA guidelines](#) the familiarisation costs for the pSAR would be approximately £24,576. [4 compliance staff to read 200 pages of legal text [16 days each] at a rate of £48 per hour.] This would be a one-off cost.

The IA for the 2011 IBSAR stated that it was not possible to quantify the monetised benefits, but noted that improved resolution arrangements for investment firms will benefit clients, counterparties and creditors of the insolvent firm by lessening the length of the administration. This reasoning also applies to the pSAR:

- a. The benefits of the SAR's objectives depend on the specific circumstances of the administration.
  - i. This will also be the case for the pSAR.
- b. The benefits of the bar date proposal depend on the circumstances of the administration.
  - i. This will also be the case for the pSAR.
- c. The benefits of increased clarity over the allocation of shortfalls in an omnibus account are again dependent on the specific circumstances.
  - i. This will also be the case for the pSAR.
- d. The benefits of giving the FCA power of direction is dependent on the circumstances of the administration.
  - i. This will also be the case for the pSAR.
- e. The benefits of continuity of service arrangements is also dependent on the circumstances of the administration.
  - i. This will also be the case for the pSAR.

It should be acknowledged, however, that the 2017 IA of the reforms to the IBSAR did attempt to quantify the impact of the benefit, with an annual net benefit to business of £4.73m. This was calculated through discussion with affected groups leading to an estimation that the amendments would reduce the cost of administration by 5-20%. In order to arrive at the annual net benefit to business figure, information was used from 10 firms who had entered the SAR since 2011 to provide sampling data. Given that this data does not exist for PIs/EMIs, as none have yet entered a SAR, we are unable to make estimates using a similar methodology. Therefore, the reasoning in the IA for the 2011 IBSAR that it is not possible to quantify the monetised benefits is most applicable to the new pSAR.

**5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:**

**a) Significant distributional impacts (such as significant transfers between different businesses or sectors)**

This measure will cause IPs to follow a different set of rules and regulations when managing insolvencies. The creditor hierarchy will not change and therefore no creditors will lose out in favour of other creditors, so there should be no difference in distribution and no new transfers.

**b) Disproportionate burdens on small businesses**

This will not cause additional costs to small businesses in the payments and e-money space as there will be no changes to these businesses until they become insolvent. IPs will be using a different tool-kit when managing insolvencies, and this will not affect small IPs more-so than large ones.

**c) Significant gross effects despite small net impacts**

The effects of the IBSAR have been a reduction in the costs of administration and a quicker return of client assets to customers and monies to creditors. We have not seen any significant gross effects in the IBSAR and do not anticipate any in the pSAR.

**d) Significant wider social, environmental, financial or economic impacts**

The wider impacts of the pSAR are likely to be an increase in the amount and timeliness of monies returned to consumers. We have considered concerns such as investor confidence, bank risk appetite in lending to Pls/EMIs and moral hazard and found that the pSAR should not create any wider impacts.

**e) Significant novel or contentious elements**

This is an established and well-received regime for investment firms which we are seeking to expand to Pls/EMIs. There are no novel or contentious elements as this regime will create benefits for consumers, creditors and IPs. Industry reaction (both trade associations for Pls/EMIs and IPs) has been supportive of these proposals.

Sign-off for de minimis assessment: SCS

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

**SCS of Resilience & Resolution**

Signed: **Joe Taylor**

Date: 05/11/2020

**SCS of Better Regulation Unit**

Signed: **Linda Timson**

Date: 04/11/2020

Sign-off for de minimis assessment: Minister

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: **John Glen**

Date: 11/11/2020

**Further information sheet**

Please provide additional evidence in subsequent sheets, as required.