

Specific Direction 16 limiting the length of initial terms for point-of-sale terminal contracts

Specific Direction 16
(acquirer POS terminal lease extent)

October 2022

Varied by Specific Direction 14/15/16a: varying Specific Directions 14, 15 and 16 (card-acquiring services))

Consolidated version
May 2024

This is a consolidated version of Specific Direction 16 as varied by Specific Direction 14/15/16a. Additions are in green and underlined. Deleted text is set in red and shown ~~struck through~~. It has been prepared by the PSR to assist users of the direction.

Specific Direction 16 (acquirer POS terminal lease extent)

1 Recitals

Whereas:

- 1.1** The PSR launched its card-acquiring market review in 2018 due to concerns that card-acquiring services may not offer value for money for merchants. It published the final report on 3 November 2021. It concluded that the supply of card-acquiring services does not work well for small and medium-sized merchants and large merchants with annual card turnover up to £50 million.
- 1.2** In the final report, the PSR identified three features that individually and in combination, restrict merchants' willingness and ability to search and switch between card-acquiring providers.
- 1.3** The PSR wants to remedy these features to improve outcomes for merchants. It aims to do this by:
- a. encouraging them to search and switch, or negotiate with their existing provider
 - b. reducing the obstacles to switching
 - c. subsequently creating incentives for suppliers of card-acquiring services to develop and offer better deals for merchants through competitive pressure as merchants become more engaged and shop around more actively with better information
- 1.4** This specific direction is intended to remedy the feature of concern that POS terminals and POS terminal contracts discourage merchants from searching and switching provider of card-acquiring services.
- 1.5** This direction is addressed to ~~14~~15 specified payment service providers (PSPs).
- 1.6** This direction was varied by Specific Direction 14/15/16a: varying Specific Directions 14, 15 and 16 (card-acquiring services) to update the list of directed PSPs and to introduce a mechanism for obligations to be placed on PSPs taking on relevant business.

2 Powers exercised and purpose

- 2.1** Visa Europe and Mastercard are payment systems designated by the Treasury under section 43 of the Financial Services (Banking Reform) Act 2013 (the Act) for the purposes of Part 5 of the Act.
- 2.2** The PSR makes this direction in accordance with sections 54(1) and (3) (Regulatory and competition functions – directions) of the Act. In accordance with section 54(3)(c), this direction applies to persons of a specified description, all of which are participants in the Visa Europe and Mastercard regulated payment systems.
- 2.3** In making its decision to use its section 54 powers, the PSR had regard to section 62(2)(a) (Duty to consider exercise of powers under the Competition Act 1998) of the Act.
- 2.4** The purpose of this direction is to require directed PSPs to ensure, in relation to merchants with an annual card turnover up to £10 million, that merchant contracts which include provision of POS terminals and incur scheduled payments, where that merchant is making use of the directed PSP's card-acquiring services, do not have an initial term in excess of 18 months and thereafter move to a rolling monthly contract.

Direction

NOW the PSR gives the following specific direction to:

Adyen ~~UK Limited~~N.V.

Barclays Bank PLC

Chase Paymentech Europe Limited

Elavon Financial Services DAC

EVO Payments ~~International GmbH, Branch UK~~ Ltd

First Data Europe Limited

First Merchant Processing (~~Ireland~~) ~~DAC~~ UK Limited

GPUK LLP

JPMorgan Chase Bank, National Association

Lloyds Bank plc

PayPal (~~UK Ltd~~ UK Ltd)

Squareup Europe (~~Sarl et Cie SCA~~) Ltd

~~Square~~ UK

Stripe Payments UK Ltd

SumUp Payments Limited

Worldpay (UK) Limited

3 General provisions

Scope of this direction

- 3.1** This direction applies to the ~~44~~15 directed PSPs named above.
- 3.2** This direction applies in relation to participation in the Visa Europe and Mastercard regulated payment systems.
- 3.3** This direction applies in relation to any contract or other arrangement, however named, which:
- includes the provision of one or more POS terminals
 - specifies a schedule of at least two payments, and

- c. is between a merchant with an annual card turnover of up to £10,000,000 which makes use of card-acquiring services operated or provided by a directed PSP, and either:
 - 1. a directed PSP, or
 - 2. a third party such as an ISO or leasing company

Requirements for POS terminal contracts

New POS terminal contracts

3.4 In relation to a new relevant merchant terminal contract, a directed PSP must ensure that:

- a. if there is an initial minimum term:
 - 1. it is not longer than 18 months, and
 - 2. once any initial minimum term is completed (and the contract does not at that point terminate), the contract has a maximum one-month recurring term, with one month's notice on the merchant's side
- b. if there is no initial minimum term, after a maximum of 18 months from the date the contract was entered into has passed, the contract is subject to a maximum one-month recurring term, with one month's notice on the merchant side
- c. if there are any exit or termination fees these are cost based, transparent, and have been fully explained to merchants before they enter into the contract

3.5 A new relevant merchant contract is a contract that:

- a. meets the criteria in paragraph 3.3, and
- b. is entered into on or after the date on which this specific direction comes into force

Existing POS terminal contracts

3.6 In relation to an existing relevant merchant contract, a directed PSP must ensure that:

- a. once any initial minimum term is completed, the contract has a maximum one month recurring term, with one month's notice on the merchant's side; or
- b. where there was no initial minimum term, after the period of a maximum of 18 months from the date the contract was entered into has passed, the contract is subject to a maximum one month recurring term, with one month's notice on the merchant's side

- 3.7** An existing POS terminal contract is a contract that:
- a. meets the criteria in paragraph 3.3, and
 - b. was entered into before the date on which this specific direction came into force

3.8 A directed PSP must take into account any relevant guidance the PSR publishes.

Third party providers

3.9 Where the directed PSP does not directly contract with a merchant for the provision of one or more POS terminals, the PSP must ensure that the relevant provider of such equipment complies with the requirements of paragraphs 3.4 to 3.7 of this direction.

3.10 A directed PSP must draw the attention of a relevant provider to any relevant guidance the PSR publishes.

- 3.11** A relevant provider is any provider of POS terminal equipment which has:
- a. a contract which meets the criteria at paragraph 3.3, and
 - b. a contractual relationship with:
 1. a directed PSP, or
 2. an ISO with a contractual relationship with a directed PSP, or
 3. a payment facilitator which is not a directed PSP, but provides access to the card-acquiring services of a directed PSP

4 Key definitions

4.1 **Act** means the Financial Services (Banking Reform) Act 2013.

4.2 **Card-acquiring services** means services to accept and process card transactions on behalf of a merchant, resulting in a transfer of funds to the merchant.

4.3 **Directed PSPs** means the PSPs to which this specific direction is given.

4.4 **Independent sales organisation (ISO)** means an organisation which sells acquiring services to merchants by contractual agreement with an acquirer.

4.5 **Initial minimum term** means the shortest length of the first term of a contract, and is typically referred to as 'minimum term', 'minimum period' or 'initial term' in POS terminal contracts.

4.6 **Merchant** means an organisation which accepts card payments.

- 4.7 Participant** has the meaning given by section 42(2) of the Act.
- 4.8 Payment facilitator** means a PSP that contracts with one or more merchants to provide card-acquiring services, but may not have a direct contractual relationship with the operator of a card payment system. A payment facilitator must be registered with the operator of a card payment system by an acquirer with whom it contracts.
- 4.9 Payment System** has the meaning given by section 41 of the Act.
- 4.10 Payment Systems Regulator or PSR** means the body corporate established under Part 5 of the Act.
- 4.11 POS terminal** means an electronic device that a merchant uses to accept a card in a card-present transaction without the need to connect to a smartphone or tablet.
- 4.12 POS terminal contract** means any contract or other arrangement as described at paragraph 3.3.
- 4.13 PSP** means a payment service provider within the meaning of section 42 of the Act.
- 4.14 Regulated payment system** means a payment system designated by the Treasury under section 43 of the Act.
- 4.15 Relevant business** means activity in respect of which Section 3 of this direction imposes obligations.

5 Monitoring

- 5.1** The PSR may from time to time in writing require a directed PSP to provide it with a report on its compliance with:
- a. this direction
 - b. any requirements the PSR makes known in writing to the directed PSP or issues in guidance issued by the PSR
- 5.2** The PSP must provide the report required under paragraph 5.1 by the date given by the PSR.
- 5.3** The PSR may from time to time in writing require a directed PSP to provide or produce information about:
- a. how the PSP is complying, or proposes to comply, with this direction
 - b. which the PSR otherwise requires in connection with monitoring compliance with or the effectiveness of this direction

5.4 The PSP must provide the information by the date given by the PSR.

6 Application

6.1 This direction applies to the directed PSPs named above.

6.2 Subject to paragraph 6.11, where a directed PSP ('the transferor') transfers relevant business to another person, that person ('the transferee') is, from the date of transfer, a directed PSP.

6.3 This applies whether or not the transfer is to a group undertaking (which has the same meaning as in section 1161(5) of the Companies Act 2006).

6.4 Subject to paragraphs 6.10 and 6.11, despite the transfer, the transferor remains a directed PSP.

6.5 The transferor must give advance notice in writing to the PSR of the proposed transfer. That notice must include the anticipated date of the transfer, the name of the proposed transferee and their contact details, confirmation of whether or not the transferee is a group undertaking, the transferor's submission on whether paragraph 6.10 will apply and a description of the relevant business being transferred. The PSR may require further information to be provided about the transfer (this is without prejudice to any other power the PSR has to require information to be provided).

6.6 The notification must be given by the transferor as soon as reasonably practicable after a date for transfer has been set, and in any event no later than 28 days before the date of the anticipated transfer.

6.7 If, following the notification, there is a material change to the matters set out in the notice (for example that the transfer is no longer happening or it is to happen on a different date), the transferor must notify the PSR in writing of the change as soon as reasonably practicable.

6.8 Immediately following the transfer, the transferor and the transferee must notify the PSR in writing that the transfer has been completed. That notification may be given jointly or individually.

6.9 Where the transfer of relevant business is to more than one person, each person to which relevant business is transferred is a transferee for the purposes of this direction and consequently the PSR will assess each transferee separately for the purposes of paragraph 6.11.

6.10 Where the PSR is satisfied that, by virtue of the transfer, the transferor is no longer a PSP in a relevant regulated payment system (those systems being the Visa Europe and Mastercard payment systems), it will give notice in writing to the transferor that it is no longer a directed PSP.

6.11 The PSR may decide that a transferee or a transferor is not, despite paragraph 6.2 or 6.4, to be, or remain, a directed PSP. If it does so, it will provide a written notice to the transferee or transferor (as appropriate) setting out that decision and, in doing so, specifying when its decision will come into effect (which may be on a specified date or by reference to an event (such as the transfer)). The decision may be stated to be contingent on the transfer happening (including happening in a particular way or in relation to particular relevant business). The PSR's notice may be given at any time after the notification mentioned in paragraph 6.5 has been given to the PSR, including after the transfer has taken place.

6.12 The PSR shall maintain a schedule of directed PSPs on its website.

7 Commencement and duration

7.1 This specific direction comes into force on 6 January 2023.

7.2 This specific direction shall continue in force until such time as it is varied or revoked by the PSR.

7.3 The PSR will review this direction three years and five years after the date on which it comes into force.

7.4 The PSR may also review this direction at any other time than as provided for in paragraph 7.3.

7.5 The PSR may vary or revoke this direction at any time.

8 Citation

8.1 This specific direction may be cited as Specific Direction 16 (acquirer POS terminal lease extent).

9 Interpretation

9.1 The headings and titles used in this specific direction are for convenience and have no legal effect.

9.2 The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament, except where words and expressions are expressly defined.

9.3 References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.

- 9.4** In this specific direction, the word ‘including’ shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.

~~Made on 6 October 2022~~

~~Chris Hemsley~~

~~Managing Director~~

~~Payment Systems Regulator~~

Made on 6 October 2022

(Varied by Specific Direction 14/15/16a: varying Specific Directions 14, 15 and 16 (card-acquiring services) on 29 May 2024)

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