

Policy statement and consultation
on legal instruments

Lowering risks to delivery of the New Payments Architecture

July 2021

We welcome your views on the draft legal instruments, varying Specific Directions 2 and 3, that we propose to use to implement our decisions on the way forward for the NPA programme. If you would like to provide comments, please send these to us by **5pm on 10 September 2021**.

You can email your comments to **PSRNPA@psr.org.uk** or write to us at:

PSR Pay.UK/NPA project team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will take account of your comments when finalising the legal instruments.

We intend to publish all responses (see below about confidentiality).

We will not regard a standard confidentiality statement in an email message as a request for non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you claim to be commercially confidential. Therefore, when submitting your response, please highlight any parts of it which you consider should be redacted before publication due to confidentiality. We may nonetheless be required to disclose responses which include information marked as confidential in order to meet legal obligations, in particular as a result of a request made under the Freedom of Information Act 2000. We will endeavour to consult you if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the First Tier Tribunal.

You can download this paper from our website:

<https://psr.org.uk/publications/consultations/cp21-8-lowering-risks-to-delivery-of-the-new-payments-architecture/>

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1 Executive summary

- 1.1** In this document, we set out our decisions on reducing the risks to successful delivery of the New Payments Architecture (NPA) and consult on the draft legal instruments we propose to use to implement these decisions.

The renewal of the UK's interbank payments infrastructure will benefit people and businesses when making and receiving payments, but the risks to its successful delivery need lowering

- 1.2** Every day, millions of us rely on interbank payments (payments that are made from one bank account to another); whether receiving wages or benefits via Bacs, paying bills using Direct Debit, or transferring money to a friend using internet or mobile banking via Faster Payments. Bacs and Faster Payments are essential to our day-to-day lives and the smooth functioning of the UK's economy. In 2020, they accounted for nearly £7 trillion of payments.
- 1.3** The NPA is the payment industry's proposed way of organising the clearing and settlement of most interbank payments in the future, including those that currently use Bacs and Faster Payments. We support this initiative because it should deliver improved services – for example, by enabling better payment status tracking and the ability to send more information with payments. It should also make payments more resilient, help meet the growing demands for digital payments and strengthen competition between payment services and payment systems, to benefit people and businesses across the UK.
- 1.4** Pay.UK, the operator of Bacs and Faster Payments, is responsible for delivering the NPA. This includes procuring NPA central infrastructure services (CIS). Through our monitoring of Pay.UK's work and analysis of information it provided, earlier this year we reached the view that there are unacceptably high risks that the NPA programme will not provide value for money and could delay or prevent the benefits of the NPA being delivered.
- 1.5** These risks prompted us to seek views in our February consultation paper (CP21/2, *Delivery and regulation of the New Payments Architecture*) on:
- phasing the development of the NPA by narrowing the scope of the CIS contract
 - the approach to the procurement of the CIS contract

Phasing the development of the NPA

- 1.6** A total of 42 stakeholders responded to our consultation with comments on the risks to successful delivery of the NPA. Most respondents broadly agreed with our view of the risks and supported our preferred approach of narrowing the scope of the CIS contract to services that provide enhanced immediate payments and enable Faster Payments transactions to move to the NPA, mainly to speed up delivery. There were mixed views, though, on the inclusion of additional services and system functionality. This includes services that would enable payment service providers (PSPs) and end users to submit files of payments into the CIS.
- 1.7** We have decided to require Pay.UK to narrow the scope of the CIS contract by mandating that it:
- must, as a minimum, buy services needed to support single push payments (which will allow most Faster Payments transactions to migrate to the NPA)
 - may buy additional services and system functionality (beyond that required to support single push payments) if we do not object to their inclusion in the CIS contract
- 1.8** We define a single push payment as a payment that is initiated by or on behalf of the payer where both submission to and output from the central infrastructure happens on the same day using single payment messages. Single push payments can take a number of forms, from immediate payments that are accepted or rejected in near real-time by the receiving PSP (or party responding on its behalf) to less urgent payments that may not require a real-time response (but must still be output by the central infrastructure on the same day they are received by it).
- 1.9** We consider our decision will lower risks to NPA delivery by reducing the complexity of the NPA programme. This will make it easier for Pay.UK to secure a contract that provides value for money, and enable some NPA benefits to be realised sooner. Our decision also promotes competition and innovation as Pay.UK will not be able to buy services or system functionality specifically to support a future migration of Bacs transactions (unless it asks and we do not object). This provides an opportunity for those services to be developed and provided competitively.
- 1.10** We recognise that Pay.UK wants to do more work to consider the trade-offs of including additional services and system functionality in the CIS contract. This might include file-based services and system functionality that aims to make it easier to potentially support further payment types and use cases in the future, for instance to help with a migration of Bacs transactions. Importantly, though, Pay.UK must justify buying additional services or system functionality after consulting stakeholders, and we may object to their inclusion in the CIS contract. We will take account of a number of matters in deciding whether to object, including the implications for competition between payment systems.

- 1.11** It is essential that Pay.UK gives clarity to stakeholders about its proposals, and that stakeholders are given suitable opportunities to contribute. We also expect Pay.UK to take account of relevant developments, including Open Banking, and consider ways other than buying additional services or system functionality to deliver the desired outcomes. These steps would help alleviate some of the concerns we have about procuring, in the near term, system functionality to support a future migration of Bacs transactions to the NPA based on broad assumptions using propositions lacking definition and industry engagement.
- 1.12** In addition, Pay.UK and stakeholders will need to carry out further work on the future long-term strategy for Bacs. We will require Pay.UK to provide us with reports at specified intervals on its planning activity and subsequent steps taken to progress this work. To ensure transparency and keep the matter high on the industry's agenda, we will also be able to require Pay.UK to publish these reports or publish them ourselves. One possible outcome of Pay.UK's work on the long-term Bacs strategy is a second procurement to buy services to support the migration of Bacs transactions to the NPA. Alternatively, a second procurement may not be necessary – for example, if services to support the migration of Bacs transactions are provided by the market or further analysis demonstrates that these transactions should continue to be delivered through a separate infrastructure.
- 1.13** Specific Directions (SDs) 2 and 3 require Pay.UK to run a competitive procurement for the contract to supply central infrastructure for Bacs and Faster Payments respectively. As the NPA infrastructure is intended to replace existing central infrastructures for Bacs and Faster Payments, Pay.UK set out to comply with the requirements in SDs 2 and 3 by running a competitive procurement process for the NPA CIS. While the obligations on Pay.UK to carry out a competitive procurement will remain, we intend to vary SDs 2 and 3 to enable the phasing of the NPA's development. One change we propose to make to SD2 would remove the current compliance deadline of 2 December 2023 and give us the power to give Pay.UK notice of a new date should that be appropriate. In the interim, we are also ensuring Pay.UK can only extend the existing contract, or award a new contract, for Bacs central infrastructure if we do not object to this.

Approach to the procurement of central infrastructure services

- 1.14** Respondents had mixed views on how the CIS contract should be secured, though these have shifted over time in response to Pay.UK's analysis of the options. Notably, a small percentage of respondents who initially favoured a direct award of the NPA CIS to the incumbent provider of the Bacs and Faster Payments central infrastructures, subsequently said they had reconsidered the arguments and that they now preferred continuing with the current competitive procurement (which Pay.UK paused last year) or were agnostic regarding the options. After taking account of this shift in views, most respondents favoured a competitive procurement, and a small percentage favoured a direct award.

- 1.15** We have decided the obligation on Pay.UK to carry out a competitive procurement will remain. We continue to have concerns about whether Pay.UK would have enough commercial leverage to secure good outcomes that support our regulatory objectives in a direct award. Moreover, Pay.UK's analysis suggests this option would not be materially quicker than continuing the current competitive procurement.
- 1.16** Either continuing the current competitive procurement or starting a new one could secure a contract that provides value for money and good outcomes for service-users. Importantly, Pay.UK considers that the terms of the current competitive procurement allow it to narrow the scope (as per our decision) and has told us that all the bidders remain engaged and are credible. While it is for Pay.UK to decide which option to pursue, we see the benefits that continuing the current procurement has, including securing a CIS contract more quickly.
- 1.17** While the obligation on Pay.UK to carry out a competitive procurement will remain, we propose to change the deadline for complying with SD3 to 1 April 2026. Taking account of Pay.UK's latest plan for delivering the NPA, this is the date by which we reasonably expect payments will no longer be processed by the Faster Payments central infrastructure.

Box 1: Our decisions

We will require Pay.UK to narrow the scope of the CIS contract by mandating that it:

- must, as a minimum, buy services needed to support single push payments
- may buy additional services and system functionality (beyond that required to support single push payments) if we do not object to their inclusion in the CIS contract

The obligation on Pay.UK to carry out a competitive procurement will remain.

We will require Pay.UK to provide reports at specified intervals on its planning activity and subsequent steps taken to progress work on the future long-term strategy for Bacs. We may publish these reports or require Pay.UK to do this.

Next steps

- 1.18** We are seeking views by 10 September 2021 on the changes we propose to make to SDs 2 and 3 to implement our decisions. Having considered views, we plan to give the directions to vary SDs 2 and 3 in Q4 2021. We plan to publish a separate policy statement by the end of this year that sets out our regulatory framework for the NPA.

2 Introduction

The NPA presents a significant opportunity to deliver improved services and resilience, help meet the growing demands for digital payments and strengthen competition.

We consider, and most stakeholders agree, that at present there are unacceptably high risks to the successful delivery of the NPA and the timely realisation of these benefits.

We have decided on a way forward that lowers risks to delivery of the NPA and we want to hear views on the draft legal instruments we propose to use to implement our decisions.

The purpose of this document

2.1 In February 2021, we published a consultation paper (CP21/2)¹ on delivery and regulation of the NPA, setting out:

- options for reducing risks to the successful delivery of the NPA, which we considered to be unacceptably high
- proposals for mitigating risks to competition and innovation relating to when the NPA is operational

2.2 This document:

- sets out our decisions on lowering risks to delivery of the NPA
- seeks views on the changes we propose to make to SDs 2 and 3 to implement our decisions²

1 PSR, *Delivery and regulation of the New Payments Architecture* (2021). See: <https://psr.org.uk/publications/consultations/cp21-2-consultation-on-delivery-and-regulation-of-the-new-payments-architecture/>

2 These directions currently require Pay.UK to take the action necessary to ensure that any central infrastructure contracts for Bacs and Faster Payments that are in place on or after 2 December 2023 (Bacs, SD2) and 30 June 2023 (Faster Payments, SD3) have been competitively procured. See: <https://www.psr.org.uk/publications/general/specific-direction-2/> and <https://www.psr.org.uk/publications/general/specific-direction-3/>

The importance of interbank payments and the NPA

- 2.3** Millions of us rely on interbank payments every day – whether receiving wages or benefits via Bacs, paying bills using Direct Debit, or transferring money to a friend using internet or mobile banking via Faster Payments. Bacs and Faster Payments are essential to our day-to-day lives and the smooth functioning of the UK’s economy. In 2020, they accounted for nearly £7 trillion of payments.
- 2.4** The NPA is the payment industry’s proposed way of organising the clearing and settlement of most interbank payments in the future, including those that currently use Bacs and Faster Payments.
- 2.5** We support this initiative to renew the UK’s retail interbank infrastructure. Delivered right, the NPA can help facilitate our proposed long-term strategy, which we published in June 2021 for consultation.³ The NPA presents a significant opportunity to deliver improved services by, for example, enabling better payment status tracking and the ability to send more information with payments. It should also make payments more resilient, help meet the growing demands for digital payments and strengthen competition between payment services and payment systems, to benefit people and businesses across the UK.
- 2.6** Pay.UK, the operator of Bacs and Faster Payments, is responsible for the design and delivery of the NPA. This role includes procuring CIS for the NPA. The CIS consists of ‘core’ clearing and settlement services (CSS), several common services and functionality to determine how an individual payment is processed. Annex 1 provides an overview of the current conceptual design of the NPA.
- 2.7** Our role is to monitor Pay.UK’s work to deliver the NPA – and use our powers, where appropriate – to assure an outcome that supports our statutory objectives to promote competition, innovation and the interests of service-users.⁴ We are collaborating closely with the Bank of England, which supervises Bacs and FPS.

Establishing an effective way forward

- 2.8** Through our monitoring of Pay.UK’s work and analysis of information it provided, earlier this year we reached the view that there are unacceptably high risks that the NPA programme will not provide value for money and could delay or prevent the benefits to competition and innovation in payment services we want the NPA to deliver. These risks prompted us to consult on options for de-risking the NPA programme in CP21/2.

³ PSR, *Our proposed PSR Strategy* (2021): <https://www.psr.org.uk/publications/general/our-proposed-strategy/>

⁴ ‘Service-users’ are those who use, or are likely to use, services provided by payment systems. They include Payment Service Providers and ‘end users’ (such as individual consumers).

- 2.9** Since then, we have engaged widely with stakeholders on the options for lowering risks to delivery. For example, we hosted a webinar in March 2021 to discuss these options and held bilateral meetings with a variety of stakeholders.⁵ We also sought feedback from the PSR Panel (our independent advisory body) and presented to the End User Advisory Council (EUAC). This is a group Pay.UK set up to provide advice and challenge on the end-user interest in its work.
- 2.10** A total of 42 stakeholders responded to CP21/2 with comments on de-risking delivery of the NPA. These include consultancies, PSPs, technology service providers, trade associations and large end users. We have published non-confidential versions of the responses we received to CP21/2 alongside this document, as well as a related submission from the EUAC.⁶ Importantly, there was broad agreement among respondents that the NPA programme needs de-risking.
- 2.11** In June 2021, we published non-confidential versions of Pay.UK's responses to CP21/2 that commented on de-risking delivery of the NPA to give all stakeholders visibility of its analysis.⁷ We invited stakeholders to consider whether, in the light of Pay.UK's responses, they wished to send us views. Five stakeholders provided comments. We have published non-confidential versions of these comments alongside this document.

Our decisions

- 2.12** Box 2 sets out our decisions on the way forward.

Box 2: Our decisions

We will require Pay.UK to narrow the scope of the CIS contract by mandating that it:

- must, as a minimum, buy services needed to support single push payments
- may buy additional services and system functionality (beyond that required to support single push payments) if we do not object to their inclusion in the CIS contract

The obligation on Pay.UK to carry out a competitive procurement will remain.

We will require Pay.UK to provide reports at specified intervals on its planning activity and subsequent steps taken to progress work on the future long-term strategy for Bacs. We may publish these reports or require Pay.UK to do this.

5 For a summary note of the webinar and the slides we presented, see: <https://www.psr.org.uk/publications/general/summary-note-of-webinar-psr-consultation-cp21-2-risks-to-delivery-of-the-new-payments-architecture-10-march-2021/>

6 Some stakeholders provided up to three responses that commented on de-risking delivery: one in March, another in May, and a further one in June. In their May responses, these stakeholders mainly commented on our proposals for mitigating risks to competition and innovation relating to when the NPA is operational, but they also provided updated views on the approach to the procurement. All responses to CP21/2 are here: <https://psr.org.uk/publications/consultations/cp21-8-lowering-risks-to-delivery-of-the-new-payments-architecture/>

7 See: <https://www.psr.org.uk/publications/general/pay-uk-s-responses-to-our-consultation-on-the-delivery-of-the-npa/>

2.13 We said in CP21/2 that, if we were considering requiring Pay.UK to make changes to the scope or approach for the CIS procurement, we would set out and consult on our proposals in Q3 2021. We have decided the obligation on Pay.UK to carry out a competitive procurement will remain. While we are requiring Pay.UK to narrow the scope of the CIS contract, we see very limited, if any, benefit in us consulting on this again. Our position confirms the preferred approach we set out in CP21/2 and stakeholders have had the opportunity to comment on it already.

2.14 Moreover, in deciding whether to object to any proposed additional services or system functionality beyond the minimum being included in the CIS contract, we will consider how adequate any Pay.UK consultation is. Further consultation by us on the scope or approach to the CIS procurement would also mean continued uncertainty for stakeholders about our position on the way forward, which could slow or hinder Pay.UK's work to progress the NPA programme in a timely way. For these reasons, we are confirming final decisions now rather than consulting further on these points.

The rest of this document

2.15 The rest of this document is structured as follows:

- Chapter 3 considers comments we received on the scope of the CIS contract and sets out our decision to narrow the scope.
- Chapter 4 considers comments we received on the approach to the CIS procurement and sets out our decision that Pay.UK should run a competitive procurement.
- Chapter 5 describes the changes we plan to make to SDs 2 and 3 to implement our decisions.
- Chapter 6 sets out our next steps and the consultation questions on which we welcome views.

2.16 Annex 1 provides an overview of the current conceptual design of the NPA. Annex 2 summarises and responds to points raised by respondents that relate to topics other than the scope and approach to the CIS procurement.

2.17 Annexes 3 and 4 set out for consultation draft SDs to be given to Pay.UK (as the operator of the Bacs and Faster Payments) that vary each of SDs 2 and 3.

3 Scope of procurement of central infrastructure services

We have decided to require Pay.UK to narrow the scope of the CIS contract by mandating that it:

- must, as a minimum, buy services to support single push payments
- may only buy additional services and system functionality (beyond that required to support single push payments) if we do not object to their inclusion in the CIS contract

Our decision will lower risks to NPA delivery by reducing complexity, making it easier for Pay.UK to secure a contract that provides value for money and enabling some NPA benefits to be realised sooner. Our decision also promotes competition and innovation as Pay.UK will not be able to buy services or system functionality specifically to support a future migration of Bacs transactions (unless it asks us and we do not object). This provides an opportunity for those services to be developed and provided competitively.

We will also require Pay.UK to provide reports to us at specified intervals on its planning activity and subsequent steps taken to progress work on the future long-term strategy for Bacs. We may publish these reports or require Pay.UK to do this.

3.1 In CP21/2, we identified two options for the scope of the CIS procurement:

- **Scope option 1:** Pay.UK procures CIS based on a broad set of requirements, including the CSS (needed to process every NPA transaction), plus all the common services it thinks will be needed to support both the Faster Payments and Bacs migrations. This is Pay.UK's original scope of the current procurement.
- **Scope option 2:** Pay.UK procures CIS that provide an enhanced immediate payments service and enable Faster Payments transactions to move to the NPA. We said this was our preferred approach in CP21/2.

3.2 Under our preferred approach, Pay.UK would carry out further work on how Bacs services – including Direct Debit – should be delivered in the future. If it concluded that Bacs transactions should be formally migrated to the NPA, and that additional central services or system functionality would be needed to support this, then there would be a second procurement for the additional CIS requirements.

3.3 In CP21/2, we asked stakeholders:

- for views on our assessment of the scope options and if they agreed with our preferred approach
- if a procurement with a narrower scope should include common services that could support the migration of the existing Faster Payments file-based services of Direct Corporate Access (DCA)⁸ and File Input Module (FIM)⁹
- whether, in carrying out a procurement with a narrower scope, Pay.UK would need to consider how the procured solution could support Bacs-related features in the future

Respondents' views on the scope of the procurement

Views on our analysis of the alternative scope options

3.4 A total of 39 respondents answered the question in CP21/2 about our analysis of the alternative scope options. Nearly all respondents said they 'generally', 'broadly' or 'partially' agreed with our analysis of the risks, pros and cons of scope options 1 and 2. An important theme in responses was that industry wants as much certainty as possible on the way forward, to enable delivery of the NPA to proceed quickly and market participants to plan effectively. Most respondents, as well as Pay.UK's EUAC, agreed that the procurement scope should be kept narrow, focusing on enhancing service provision for single push payments and enabling a migration of Faster Payments transactions to the NPA.

3.5 A small percentage of respondents set out the importance of considering early in the process how the NPA will utilise or interact with existing services, particularly the Current Account Switch Service (CASS) and the bulk payments redirection service. A small percentage (made up of different respondents) said they would be concerned if the NPA only aims to replicate the existing Faster Payments and Bacs legacy systems and the services used today. One suggested this would compromise the value that could be derived from implementing new CIS based on ISO 20022.

Scope of the procurement

3.6 Most of the 38 respondents to our question on preferred scope – including all larger PSPs, all smaller PSPs, and all technology services providers except one – said they preferred or partially agreed with our preferred approach (scope option 2 in CP21/2). Some saw narrowing the procurement scope as beneficial for delivery, and for allowing the migration challenges of the more complex Direct Debit service to be fully considered over a longer

⁸ DCA is a file-based service that allows users to submit Faster Payments directly to the central infrastructure using a message standard based on Bacs Standard 18.

⁹ FIM is a file-based service that allows users to submit Faster Payments directly to the central infrastructure using the ISO 8583 message standard.

timeframe. Some caveated their support or suggested additional considerations or alternative approaches. Just two respondents – one technology services provider and one consultancy – had a clear preference for continuing with the current scope.

- 3.7** While not disagreeing with scope option 2, the Electronic Money Association (EMA) said there is a market requirement to modernise Bacs that should not be ignored. Similarly, a smaller PSP said it was concerned about delaying work on Bacs as the UK's Direct Debit system lags behind those in other countries.
- 3.8** Some PSPs and a payment system operator said if scope option 2 is delivered right then new overlay services could replace traditional Bacs services and usage over time. Some smaller PSPs said Open Banking products are already emerging that could provide alternative ways to meet current Bacs use cases. A few respondents commented on the need for commercial incentives to support the development of new services. The EMA said the PSR and the Competition and Markets Authority should consider mitigating the risk that lack of commercial incentives for incumbent PSPs makes the development of alternative market-led propositions difficult. Similarly, a large PSP and UK Finance said the market will only 'respond positively' if the financial and non-financial benefits make the adoption of new services worthwhile.
- 3.9** Most respondents provided views on the emergence of market-led propositions that might assist with the migration of Bacs transactions to the NPA. Around half of respondents said some time should be allowed for such propositions to emerge and a small percentage of respondents suggested timeframes. These ranged from six months up to 'a minimum of three years' after the CIS goes live.
- 3.10** A few respondents suggested evaluating an accelerated migration of Bacs Direct Credit transactions as part of the initial phase, leaving the Bacs system in place to support just Direct Debits. A technology services provider suggested this on the basis that Direct Credit payments are well suited to migration if CIS access is available for 'Bureau' service providers who can provide file handling services such as warehousing and debulking. They said that this would require the NPA design to support the ability for third parties such as payroll service providers and accountancy firms to initiate 'mandated payments' on behalf of end users.

Inclusion of file-based services in the procurement

- 3.11** Half of all respondents expressed a clear view on whether file-based services should be included in the procurement. Of those, around half, including most smaller PSPs, said that file-based services designed to enable the migration of DCA and FIM transactions should be excluded from the procurement. They considered that there will be opportunities for third parties to offer file-based services for customers wanting them.
- 3.12** In contrast, a similar number of respondents, including three large PSPs and UK Finance, argued that the CIS procurement should be able to meet the needs of high-volume PSPs and corporates by providing continued central support for file-based submissions. Pay.UK said that the procurement should include replacement services for DCA and FIM including because not doing so would delay the decommissioning

of FPS and hence create unnecessary costs for the industry. Pay.UK caveated that this was its initial view and said it wanted to carry out further analysis over the coming year on the benefits and impacts of buying DCA and FIM replacement services as part of the CIS contract, including through engagement with bidders.

Consideration of services and system functionality related to a future Bacs migration

- 3.13** A small percentage of respondents, including one large and one smaller PSP, said the NPA must be scalable so that it can cater for the future migration of Bacs transactions, as well as volume growth that could occur as a result of the introduction of Open Banking Variable Recurring Payments.¹⁰ Several smaller PSPs and a consultancy took the view that the focus should be on delivering a 'thin' core, and that the market would provide additional services that might assist a future migration of Bacs transactions.
- 3.14** A few respondents, including Pay.UK, argued that there should be a 'single design' phase for the CSS. Pay.UK said that this would involve the upfront analysis of the overall CSS requirements and design and understanding the impact on the build. The intention is that this approach would enable choices to be made later regarding any specific services necessary to replace DCA and FIM (see paragraph 3.12), and similarly for any services or functionality needed to support the potential future migration of Bacs transactions to the NPA, including any functionality necessary to support a multi-day payment proposition.¹¹
- 3.15** Pay.UK argued that a single design approach would help to future-proof the CIS by minimising and de-risking changes that might be needed later if Bacs transactions migrate to the NPA. Pay.UK also said its view reflects feedback from some stakeholders that the benefits of the current Bacs 3-day payment processing cycle could be lost if the NPA was to only provide for immediate payments. It said the additional costs from its proposal would likely be 'marginal'. Pay.UK said it wanted to carry out further work over the coming year on the trade-offs of buying upfront elements of the CIS needed to support the potential future migration of Bacs transactions to the NPA.
- 3.16** A few respondents said that while they favoured a narrower set of requirements for the procurement, these should still be based on securing a flexible architecture or include some functionality to support the ability for Bacs replacement services being delivered by market solutions. This approach, they said, would avoid the need for significant additional CIS software development later when preparing to migrate Bacs services.

10 The Open Banking Implementation Entity defines Variable Recurring Payments as 'a series of payments initiated by a Payment Initiation Service Provider (PISP) using a long-held consent'. These payments allow customers to safely connect authorised payments providers to their bank account, enabling the provider to initiate payments on the customer's behalf, within agreed parameters that provide the customer with control and transparency.

11 The multi-day payment proposition aims to replicate some of the perceived advantages of the existing Bacs service in the NPA, including the processing of payments over several days to enable lower processing costs and pre-notification of settlement amounts.

- 3.17** In contrast, a payment system operator¹² said Pay.UK's suggestion to introduce bulk and multi-day payments capabilities within the scope of the CIS, to provide flexibility in functionality and facilitate future Bacs migration, was not consistent with the principle of having a thin central infrastructure, creating unnecessary complexity and implicitly assuming that the Bacs services will be migrated at a future date in their current form. It said it felt strongly that services only need to be provided using CIS if it can be demonstrated that a service would not be provided in a competitive market or that some other market failure would arise. A large PSP said it was 'surprised' to learn of consideration of a multi-day payment process and that it would counsel against attempting to accommodate the detailed features and idiosyncrasies of Bacs.
- 3.18** Pay.UK and a large PSP recommended we should consider replacing SD2 with an obligation on Pay.UK to consult on the future of the Bacs payment system after the NPA goes live to give time to observe any organic migration from Bacs. Pay.UK said this approach would ensure the question of Bacs migration was not deferred indefinitely but that short-term effort would not be diverted away from the priority of delivering the NPA's foundation architecture and services to replace Faster Payments. The EUAC suggested we should require Pay.UK to develop an appropriate plan for the future migration of Bacs transactions in a way that minimises end user risks and delivers equivalent or improved services, including for consumer protections. A few respondents suggested that rapid changes in the marketplace mean that Bacs-related requirements for the NPA might look quite different in a few years' time from how they look today.

Our response

- 3.19** We have decided that Pay.UK should narrow the scope of the CIS contract to focus on single push payments (as per the preferred approach we set out in CP21/2). Box 3 sets out the requirements we will place on Pay.UK to achieve this outcome. In addition, we recognise that Pay.UK and stakeholders will need to carry out further work on the future long-term strategy for Bacs, including Direct Debit (see paragraphs 3.32 and 3.33).

Box 3: Narrowing the scope of the CIS contract

We will require Pay.UK to narrow the scope of the CIS contract by mandating that it:

- must, as a minimum, buy services needed to support single push payments
- may buy additional services and system functionality (beyond that required to support single push payments) if we do not object to their inclusion in the CIS contract

¹² The category of respondents we group together as payment system operators does not include Pay.UK, whose views we draw out separately as the NPA delivery body.

Minimum scope of the CIS contract

- 3.20** We define a single push payment as a payment that is initiated by or on behalf of the payer, where both submission to and output from the central infrastructure happens on the same day using single payment messages.
- 3.21** Single push payments can take various forms, from immediate payments that are accepted or rejected in near real-time by the receiving PSP (or party responding on its behalf) to less urgent payments that may not require a real-time response (but must still be output by the central infrastructure on the same day they are received by it). This means they can support a wide range of propositions for service-users. We support the work Pay.UK has been doing to consider the features and procurement requirements for a new single push payment proposition that is more suited to supporting use cases for online and in-store payments between consumers and businesses.
- 3.22** Respondents generally agreed with us that narrowing the scope of the CIS contract will help to lower risks to delivery of the NPA. We remain of the view that this would:
- make it easier to secure a contract that provides value for money, by reducing the complexity of this contract and avoiding buying services that have not been fully determined or validated with stakeholders and may not be needed by the time they are scheduled for use
 - help realise some of the benefits of the NPA sooner, including the benefits from enabling single push payments to adopt ISO 20022, by reducing the complexity of the procurement and the work required to define the requirements, thereby enabling it to be carried out faster
 - promote competition and innovation by providing an opportunity for market-led overlay services to emerge that can help the migration of Bacs transactions to the NPA
- 3.23** As we set out in CP21/2, there are also some downsides to this approach. A slower migration of Bacs transactions to the NPA means a delay to the benefits for PSPs and other service-users that could be enabled by the adoption of ISO 20022 for those transactions. These downsides are outweighed by the above benefits, including the benefit of enabling single push payments to adopt ISO 20022 sooner. We note the arguments made by some respondents about the need to modernise aspects of Bacs. We expect incremental enhancements to the Bacs system and services to continue to be considered and taken forward by Pay.UK where there is sufficient stakeholder support to do so.

- 3.24** We acknowledge the importance of ensuring that close attention is given to fundamental aspects of the NPA design, including how these affect the CIS procurement requirements. These fundamental aspects include:
- its participation model
 - ensuring the CIS can support future payment volumes
 - how it will utilise or support essential industry services such as CASS, Cash ISA transfers, bulk payment redirections and the Biller Update Service
- 3.25** We expect Pay.UK to consider these matters fully, in conjunction with stakeholders, as it further develops its requirements.

Consideration of file-based services and other functionality

- 3.26** **We are content for Pay.UK to do further work over the coming year on the trade-offs of including, within the CIS contract, additional services and system functionality beyond that required to support single push payments.** This includes examining the inclusion of file-based services and system functionality intended to make it easier to support further payment types and use cases in the future, for instance to help with a migration of Bacs transactions. Pay.UK considers the additional work it plans to carry out will not materially impact the NPA programme, including timescales for carrying out the CIS procurement. As set out in Box 2, we can object to proposals to include any additional services or system functionality. We will consider a number of criteria in deciding whether to object, including the implications for competition between payment systems.
- 3.27** **We share the concerns of those respondents who did not support a straight replication of today's DCA and FIM services in the CIS.** These services are based on legacy messaging standards, with limited use case application and low uptake. **There could be a case, however, for the CIS contract to include some ability for the CIS to receive file-based submissions of push payments.** Their inclusion could provide stakeholders with certainty and – as some respondents said – avoid the risk of needing to maintain the existing Faster Payments system longer for a small number of residual users. Further work is needed to assess whether these benefits are outweighed by the potential for central procurement of file-based services to stifle competition in overlay services. This was highlighted by around half of respondents who commented (see paragraph 3.11).

3.28 We consider it essential that Pay.UK provides clarity to industry stakeholders about its proposals to include additional services and system functionality in the CIS contract, and that all interested stakeholders have suitable opportunities to contribute to the proposals. These steps would help mitigate a number of concerns we have about procuring services or system functionality to support NPA propositions that have not been validated with stakeholders. For this reason, one of the criteria we will consider when deciding whether to object to the inclusion of additional services or system functionality in the scope of the CIS contract is the adequacy of consultation with stakeholders and how views are taken into account.

3.29 Our concerns include that procuring system functionality in the near term, only for the purpose of accommodating potential future multi-day payment propositions in the longer term, would in effect require one of the following:

- defining elements of the long-term strategy for Bacs services now
- procuring services based on broad assumptions, using propositions lacking definition and industry engagement without undertaking a thorough analysis of alternative models for how today's Bacs use cases might be met in the longer term

3.30 Such action also carries risks of unintended consequences – it could hamper the emergence of future competitive overlay services or result in procurement of system functionality later deemed unsuitable.

3.31 If Pay.UK wishes to buy additional services and system functionality, we expect it to provide robust analysis of the pros and cons of using centrally procured CIS functionality to future-proof the design or support a particular outcome, as opposed to alternative approaches. For example, one alternative could be to use a decentralised, standards-based overlay approach using Open Banking where third parties could develop services to achieve a similar outcome. This analysis should be focused on the justification for the design of any additional services and system functionality and their inclusion in the CIS contract; the separate need for a long-term strategy for Bacs payments is discussed in paragraphs 3.32 and 3.33. In considering whether or not to object to such proposed services or system functionality, we would take into account a range of matters as set out in Chapter 5.

Future strategy for Bacs including Direct Debit

- 3.32** Further work will be needed by Pay.UK and its stakeholders on the future long-term strategy for Bacs (including Direct Debit). This will include considering whether, and if so when and how, Bacs transactions should migrate to the NPA. Though this work is essential, most of it can be deferred while Pay.UK gets the procurement back on track. This will enable industry to focus in the short term on delivering the procurement and build of services to support single push payments. As per paragraph 3.22, it also gives a window of opportunity for the market to create propositions that can assist with the Bacs migration, based on the initial NPA propositions. For these reasons, we have decided not to place an obligation on Pay.UK to develop the strategy by a certain date as suggested by two respondents.
- 3.33** **We will require Pay.UK to report to us at specified intervals on its planning activity and the subsequent steps it has taken to progress the work on the Bacs strategy.** To ensure transparency and retain the matter high on the industry's agenda, we can also require Pay.UK to publish these reports or publish them ourselves. We are not, at this time, mandating specific elements of the work itself. In the short term, we expect Pay.UK and the industry to focus on delivering the procurement and build of services to support single push payments. If over time Pay.UK fails to satisfy us that its Bacs strategy planning or work is robust or sufficient, we will consider mandating specific elements of that work.
- 3.34** One possible outcome of Pay.UK's work on the long-term strategy is a second procurement to buy services to support the migration of Bacs transactions to the NPA. Alternatively, a second procurement may not be necessary – for example, if services to support the migration of Bacs transactions are provided by the market or further analysis demonstrates that these transactions should continue to be delivered through a separate infrastructure.
- 3.35** To implement our decisions, we propose to vary both SD2 and SD3. These changes are discussed in Chapter 5.

4 Approach to procurement of central infrastructure services

We will not change the obligation on Pay.UK to carry out a competitive procurement. Pay.UK can discharge this obligation by continuing the current competitive procurement or starting a new one.

A direct award is not the right way forward. We continue to have concerns about whether, in a direct award, Pay.UK would have enough commercial leverage to secure good outcomes that support our regulatory objectives. Either continuing the current competitive procurement, or starting a new one, could secure a contract that provides value for money and good outcomes for service-users.

Although it is for Pay.UK – as the delivery body – to decide which option to pursue, we see the benefits of continuing the current procurement, including securing a CIS contract more quickly.

- 4.1** Last year, Pay.UK sought to de-risk the NPA programme by pausing the current CIS procurement and applying to us for an exemption from SDs 2 and 3 on grounds of exceptional circumstances arising from the impact of COVID-19 so it could enter bilateral negotiations with the incumbent provider of central infrastructure for Bacs and Faster Payments (Vocalink). We refused the application but in doing so acknowledged that revisiting the approach to the procurement could help lower risks.¹³
- 4.2** In CP21/2, we set out three options for procuring the CIS – each with risks and potential benefits – and asked respondents which of the options they considered the best way forward and why:
- continue with the current competitive procurement
 - start a new competitive procurement
 - direct award – that is, directly negotiate with Vocalink without a competitive procurement

¹³ Pay.UK's application and our decision are available on our website here: <https://psr.org.uk/publications/general/pay-uk-application-for-exemptions-from-obligations-under-psr-specific-directions-2-and-3/>

Respondents' views on the approach to the procurement

- 4.3** Respondents had mixed views on the approach to procurement, though these views have shifted over time in response to Pay.UK's analysis of the options. A few large PSPs who had favoured a direct award in their first response to CP21/2 have since told us they support the option of continuing with the current competitive procurement, and two respondents are now agnostic regarding the options.¹⁴ The summary below reflects respondents' latest views and arguments.

Continue with the current competitive procurement

- 4.4** Almost a third of respondents that commented on the approach to procurement broadly favoured continuing with the current process, including four large PSPs, two technology service providers and Pay.UK. A small percentage of these respondents said this preference was contingent on the procurement scope staying the same. Some of these respondents argued this option would be quicker than starting a new competitive procurement, and Pay.UK said it was 'the better way forward for delivering service-user benefits in a timely fashion' given the need for certainty to enable planning. A few respondents also said this option would enable Pay.UK to achieve value for money, early delivery of a robust and innovative NPA and effective management of migration risks. They also said it would build on work and investment that bidders had already undertaken. According to Pay.UK, a significant majority of the Strategic Participant Group¹⁵ also supported continuing the current procurement.¹⁶
- 4.5** A small percentage of respondents opposed or raised concerns about continuing with the current procurement. A small PSP argued that this option was not viable due to Pay.UK's earlier application for an exemption from obligations under SDs 2 and 3. A large PSP said that the prospect of switching suppliers raised migration risks, and that cost could not be the only or highest weighted factor in the decision on the way forward. A large end user argued that continuing with the shortlisted bidders, but with an amended scope, would be 'poor practice'.

Start a new competitive procurement

- 4.6** More than a third of respondents who commented on the approach to procurement broadly favoured the option of starting a new competitive procurement, including most of the technology services providers, all large end users and several smaller PSPs. All but one favoured this option with a narrower procurement scope. Most of these respondents argued it could enable new or previously excluded providers to bid.

14 These respondents provided updated views in their May response to CP21/2 (see footnote 6) or in submissions provided after we published Pay.UK's non-confidential responses to CP21/2 (see paragraph 2.11).

15 The Strategic Participant Group is a forum set up to advise the NPA programme, consisting of a number of banks, building societies, and some non-bank PSPs.

16 As set out in Pay.UK's May 2021 follow-up response to our consultation:
<https://www.psr.org.uk/publications/general/pay-uk-s-responses-to-our-consultation-on-the-delivery-of-the-npa/>

Some suggested a new competitive procurement could be implemented faster. A payment system operator said Pay.UK should quickly test market interest to participate in a new competitive procurement with a narrower scope and that there should be a 'fail fast' strategy in place, if there is insufficient interest. A few also said competitive tension would help deliver value for money, good service-user outcomes, and innovative bids.

- 4.7** A small percentage of respondents – most of which were large and smaller PSPs – opposed a new competitive procurement. They argued this would likely add further delays to delivery of the NPA and could add to costs, including those arising from maintaining existing systems in the meantime. This concern was also acknowledged by some respondents in favour of a new competitive procurement. Most respondents said interest from credible bidders in a new competitive procurement was uncertain.

Direct award

- 4.8** After taking account of the shift in views (see paragraph 4.3), a small percentage of respondents that commented on the approach to procurement broadly favoured the option of a direct award, including two large PSPs, two smaller PSPs, a payment system operator and Vocalink. They argued this could help deliver NPA benefits quickly, enable early innovation, mitigate migration risk, and support resilience and stability. They also suggested tools to exert commercial leverage, including splitting the procurement contract, using benchmarking or requiring transparency from Vocalink, and ensuring Pay.UK is a knowledgeable buyer. Vocalink said any process that regulators may require because of a direct award could run in parallel and should not significantly add to the NPA delivery timeline. A small percentage of respondents acknowledged that relevant controls and regulatory oversight would be needed to mitigate the competition risks arising from a direct award.
- 4.9** Around a quarter of respondents that commented on the approach to procurement opposed a direct award. Some of these said this option carries risks that the procurement does not deliver value for money, competitive pricing, or innovative bids, and could create greater dependency on Vocalink. A few said fast realisation of benefits at lower cost is not guaranteed and that the implementation of regulatory safeguards to mitigate competition risks could take time. A technology services provider said a particular concern with direct award is the risk that Vocalink does not accept the regulatory framework we are developing to mitigate risks to competition and innovation relating to when the NPA is operational.
- 4.10** A few respondents provided other views on the procurement approach.¹⁷ These included a large PSP which said that 'a CIS provider might not have strong incentives to control costs or improve services', and that this should be mitigated through a competitive procurement exercise. They also said 'the discipline provided by a competitive procurement should limit the need for intrusive ex ante regulation'. The payment system operator that favoured a direct award said, amongst other things,

17 Two respondents advocated for a competitive procurement process without further specifying between the options, and one did not support any option. A few respondents said they considered continuing the current competitive procurement viable or would not object to it if chosen, despite favouring another option.

that the emphasis on securing a lower price for central infrastructure was misplaced, as these costs are insignificant relative to the overall costs of running the system.

Our response

- 4.11** Our aim is to make sure Pay.UK follows a robust procurement process and the outcome is consistent with our statutory objectives. Our assessment of the options considers the arguments put forward by respondents and takes account of factors, including:
- speed to contract award
 - the likelihood of securing an appropriate CIS contract price and level of service
 - the likelihood of success of the process
 - the likelihood of securing the regulatory protections that we consider are appropriate to mitigate risks to competition and innovation relating to when the NPA is operational (our regulatory framework for the NPA)
- 4.12** A few respondents commented on costs and we note one respondent's argument that the focus on securing a lower price for central infrastructure is misplaced. Central infrastructure cost is an important element of the price charged to CIS users, which in turn has implications for competition. High prices, for example, could deter entry. For this reason, as per 4.11, securing value for money (through an appropriate CIS contract price and level of service) is one factor in our assessment.
- 4.13** Taking account of respondents' views and engagement with stakeholders, we do not think that a direct award is the right way forward. This is partly because we continue to have concerns about whether, in a direct award, Pay.UK would have enough commercial leverage to secure a good outcome that supports our regulatory objectives. Some respondents had views and suggestions on how to alleviate these concerns (see 4.8), but these are unlikely to deliver outcomes (as regards an appropriate CIS contract price and level of service) that cannot be achieved via a competitive procurement and may not be effective if, for example, Pay.UK is unable to find good benchmarks for the CIS contract. There were suggestions that the existing Faster Payments contract could be used as a benchmark, but this is not necessarily a good comparator as it was not competitively procured. A further suggestion to alleviate the concerns was for Pay.UK to be a knowledgeable buyer. We consider any procurement approach will require Pay.UK to be capable and have appropriate capacity, and this will not in itself provide additional commercial leverage in a direct award.
- 4.14** While a few respondents originally said a direct award could deliver NPA benefits quickly, Pay.UK's analysis suggests that this option would not be materially quicker than continuing the current competitive procurement.
- 4.15** This leaves the two competitive procurement options: to continue with the current (paused) competitive procurement or start a new one.

- 4.16** We have decided the obligation on Pay.UK to carry out a competitive procurement will remain (albeit with a new deadline – see Chapter 5). Pay.UK can discharge this by continuing the current competitive procurement or starting a new one.
- 4.17** We consider both options are viable in principle, as:
- a. Pay.UK considers the terms of the current competitive procurement allow it to narrow the scope (as per our decision – see Chapter 3)
 - b. both options can provide the competitive tension between bidders necessary to deliver good outcomes, including value for money and contractual and regulatory protections. We understand from Pay.UK that all bidders in the current competitive procurement have confirmed their continued appetite to deliver the NPA CIS. Although respondents had mixed views on the likelihood of success of a new competitive procurement, some said a narrower scope would give an opportunity for new or previously excluded providers to take part. One respondent suggested quickly testing interest.
- 4.18** We note comments respondents made about a possible increased migration risk if a supplier other than the incumbent is chosen through a competitive procurement. As set out in our decision on Pay.UK’s application for an exemption for exceptional circumstances¹⁸, we consider a competitive procurement gives bidders the opportunity to demonstrate how they will mitigate migration risks. Pay.UK said this would form part of the evaluation criteria for its assessment of supplier responses.
- 4.19** Pay.UK’s preference (between the three procurement options), after taking account of the lower risk profile of the NPA programme should the scope of the CIS procurement be narrowed, is to continue with the current competitive procurement, including due to it providing ‘most certainty on timetable’.
- 4.20** While it is for Pay.UK – as the delivery body – to decide which option to pursue, we see the benefits of continuing the current procurement, including securing a CIS contract more quickly.

18 Our decision to Pay.UK’s application for exemptions from obligations under SDs 2 and 3: <https://www.psr.org.uk/publications/general/pay-uk-application-for-exemptions-from-obligations-under-psr-specific-directions-2-and-3/>

5 Varying Specific Directions 2 and 3

We are consulting on varying SDs 2 and 3 to implement our decisions on the scope of the CIS contract and how it is procured. We consider these changes are proportionate and effective.

- 5.1** We are setting out draft SDs for consultation to be given to Pay.UK (as the operator of the Bacs and Faster Payments) that vary each of SDs 2 and 3 to implement our decisions on the scope of the CIS contract and how it is procured.¹⁹ We set out below the detailed changes we propose in the draft SDs to amend SDs 2 and 3, and how they will support our policies.

Proposed changes to SDs 2 and 3

Narrowing the scope of the CIS contract

- 5.2** To provide certainty to stakeholders on the way forward, we propose changes to SD3 that mandate what must be delivered from the CIS contract. We set out a requirement for the CIS contract to, as a minimum, provide for the services and system functionality needed to process single push payments. Should Pay.UK wish to procure other, additional services and system functionality beyond this minimum, it must tell us, so that we can decide whether or not to prevent this by objecting. Pay.UK must provide supporting analysis for the additions, including the outcome of its consultation with stakeholders.
- 5.3** In our proposed direction to vary SD3, we set out a non-exhaustive list of matters we would take into account in deciding whether or not to object to inclusion in the CIS contract of additional services and system functionality beyond that needed to process single push payments.

¹⁹ As the NPA CIS is intended to replace existing central infrastructures for Bacs and Faster Payments, Pay.UK had set out to comply with the requirements in SDs 2 and 3 by running a competitive procurement process for the NPA CIS.

- 5.4** The changes we propose to make to SD2 are intended to implement our decision that services and system functionality currently available in the Bacs system are not required as part of the CIS contract. For this reason, we propose to remove the current 2 December 2023 deadline in SD2 and replace it with a power for us to be able to set a new deadline. Unless and until a new deadline is set, Pay.UK will not be able to extend or award a contract for the supply of Bacs central infrastructure without first telling us so that we can decide whether or not to prevent this by objecting.
- 5.5** As set out in Chapter 3, we will require Pay.UK to report to us at specified intervals on its planning activity and subsequent steps taken to progress the work on the Bacs strategy. This includes considering whether, and if so when and how, Bacs transactions should migrate to the NPA. To ensure transparency and retain the matter high on the industry's agenda, we can also require Pay.UK to publish these reports or do this ourselves. We are not, at this time, mandating specific elements of the work itself. In the short term, we expect Pay.UK and the industry to focus on delivering the procurement and build of services to support single push payments (see paragraph 3.23). If over time Pay.UK fails to satisfy us that its Bacs strategy planning or work is robust or sufficient, we will consider mandating specific elements of that work.

Competitive procurement of the CIS

- 5.6** The obligation in SD3 for Pay.UK to take the actions necessary to ensure that any central infrastructure contract has been competitively procured will stay the same. We do not, however, consider 30 June 2023 is still a realistic deadline to meet this obligation, given the delays to the procurement process. We are proposing to extend the deadline for two reasons:
- Notwithstanding the reasons for the delays to Pay.UK's procurement process, we support the initiative to renew the UK's retail interbank payments infrastructure. We want to help ensure this renewal is delivered in the right way, including to help achieve our proposed long-term strategy (see paragraph 2.5). An extension to the deadline is the best way of furthering our objectives.
 - We told Pay.UK to continue its pause of the current procurement while we are consulting and that, for the time being, it does not need to take the actions necessary to meet the 2023 deadlines in SDs 2 and 3 to have competitively procured central infrastructure contract(s) in place.²⁰
- 5.7** We propose to amend the deadline in SD3 to 1 April 2026. This is the date when we reasonably expect payments will no longer be processed by the Faster Payments central infrastructure based on Pay.UK's baseline plan, allowing for some contingency. According to Pay.UK's baseline plan, the NPA will go live in mid-2024 and a formal industry migration lasts up to 18 months. This plan assumes the scope of the CIS contract is narrowed (as per our decision) and the current competitive procurement continues. Pay.UK has sought input from stakeholders in developing the plan. For these reasons, we consider it a reasonable basis for setting the amended SD3 deadline.

²⁰ PSR, *Delivery and regulation of the New Payments Architecture* (2021), paragraph 7.5.

- 5.8** Our proposed changes to SDs 2 and 3 also include removing Section 4 of both directions, which enable Pay.UK to apply to us to extend the date for compliance in certain circumstances.²¹ The date for making an application (31 May 2018) has passed so the provision is no longer relevant.

Assessment of proposed changes

- 5.9** In considering how to vary the directions, we have taken into consideration:

- Effectiveness: the proposed changes needed to achieve the policy we have decided on. It must also be feasible to implement and enforce the changes.
- Proportionality: the proposed changes must be proportionate. This includes ensuring the policy is sufficiently important to justify implementing the changes, without more proportionate means being available to effectively achieve the intended policy.

Effectiveness

- 5.10** Our objective in seeking to amend SDs 2 and 3 is to lower risks to successful delivery of the NPA, specifically by taking steps to ensure the CIS procurement supports good outcomes, which include value for money and earlier delivery of benefits. Delivered right, the NPA can help achieve our proposed long-term strategy, which we published in June 2021 for consultation. We set out below why our proposed amendments help achieve that objective:

- SD3 will mandate a minimum scope for the CIS contract by requiring Pay.UK to procure CIS that supports single push payments (this is where the main early benefits of the NPA lie).
- SDs 2 and 3 will prevent Pay.UK from signing a CIS contract with a wider scope, unless we decide not to object to that scope.
- SD2 will ensure that Pay.UK explains what it is doing to consider the future long-term strategy of Bacs.
- SD3 will continue to require a competition that provides the best chance of good outcomes for service-users.
- Unless and until a new deadline for compliance is set, SD2 will prohibit Pay.UK from extending or awarding a new contract for the supply of Bacs central infrastructure, unless we decide not to object to this. This will ensure that our decision that central infrastructure must be competitively procured is legally enforceable.

²¹ It was applications under Section 4 of each direction that led to the original deadlines set out in paragraph 2.1 of the directions being extended to 2 December 2023 (SD2) and 30 June 2023 (SD3).

- 5.11** We consider Pay.UK should be able to comply with our proposed amendments, because:
- By narrowing the scope of the CIS contract, we are reducing the complexity of the actions Pay.UK needs to take in the short term (relative to existing obligations under SDs 2 and 3).
 - We are not changing existing obligations on Pay.UK under SD3 as regards the approach to procurement (other than to extend the date for compliance).
 - The proposed new compliance date for SD3 takes account of Pay.UK's baselined plan.
- 5.12** Our amended SDs 2 and 3 will include reporting requirements on Pay.UK to help us monitor its progress in complying with the SDs. We also intend to set out a process for us to seek assurances from Pay.UK at specified times about the design, procurement and implementation of the NPA.
- 5.13** We consider Pay.UK can and should meet the requirements that we are imposing on it through our amended SDs. We will monitor compliance and, if appropriate, take enforcement action.

Proportionality

- 5.14** The NPA presents a significant opportunity to deliver improved services and resilience, help meet the growing demands for digital payments and strengthen competition. Responses to CP21/2, though, confirmed our view that there are unacceptably high risks to successful delivery of the NPA that could delay or prevent realisation of these benefits. As explained in Chapters 3 and 4, our objective is to reduce the risks to delivery of the NPA. If the risks materialised, the significant benefits that the NPA offers for competition, innovation and service-users would not be achieved, achieved more slowly or only achieved in more limited ways. We are helping to reduce these risks by narrowing the scope of the CIS contract and retaining the obligation on Pay.UK to procure these services competitively. Our proposed amendments to SDs 2 and 3 will implement these decisions and hence help realise the benefits of the NPA.
- 5.15** We consider use of our powers under section 54 FSBRA to vary SDs 2 and 3 is proportionate as:
- Our proposed amendments to SDs 2 and 3 leave it to Pay.UK – as the delivery body – to decide whether to proceed with the existing competitive procurement or to start a new one. We consider both options viable in principle (see Chapter 4). Pay.UK wants to proceed with the former and we see the benefits that continuing the current procurement has, including securing a CIS contract more quickly.

- We are specifying in SD3 the minimum scope that Pay.UK must procure to support single push payments and therefore achieve the main early benefits of the NPA.
- We are not preventing Pay.UK from carrying out the further work it wants to do on buying, as part of the CIS contract, additional services and system functionality beyond that required to support single push payments. It must, though, justify including any such services or system functionality in the CIS contract. This will ensure that a contract which is broader than the minimum scope we specify does not add complexity and cost that might create risks to successful delivery of the NPA.
- We are not mandating what Pay.UK do in relation to the future long-term strategy for Bacs but expect it to report on its considerations.
- In arriving at the proposed new compliance deadline for SD3, we have taken account of the potential for Pay.UK to incur termination fees for exiting the Faster Payments central infrastructure contract early in order to meet that date. We have considered issues including the benefits of the timely delivery of the NPA, the purpose of the fees and the impact on Pay.UK of potentially incurring them (including the maximum fees that may be payable). Taking account of all relevant issues and our regulatory objectives, we conclude the proposed deadline of 1 April 2026 is appropriate.

5.16 Other options available to us that could potentially achieve our intended policy are to use our soft powers to influence Pay.UK's approach. We consider that implementing our policy via amended directions provides clear legal requirements, as well as transparency and certainty to other stakeholders. If we chose to use soft powers, there would be too much uncertainty about whether our objective of reducing the risk to delivery of the NPA would be achieved. Without imposing the proposed legal obligations on Pay.UK, we would not be confident our objective would be achieved. The unacceptably high risks we identified with the NPA programme would remain and could subsequently materialise, impacting its success.

5.17 Another alternative would be for us to specify in SD3 the detailed scope of the CIS procurement – that is, the procurement requirements. We do not choose this option because Pay.UK is best placed to determine these requirements and it is unnecessary and inappropriate for us to do this.

5.18 The obligations we plan to implement through varying SDs 2 and 3 will achieve our objective of reducing the risks to delivery of the NPA. They impose new requirements on Pay.UK but have been designed to avoid imposing measures that are not needed and to ensure Pay.UK continues to have an appropriate level of discretion over its procurement.

Other considerations

- 5.19** We are required to comply with the Public Sector Equality Duty under section 149 of the Equality Act 2010. We do not consider that the decisions set out in this statement, nor our draft SDs, will affect the matters we have had regard to in accordance with our duty.
- 5.20** We have considered, as required under section 62 of the Financial Services (Banking Reform) Act 2013, whether it would be more appropriate to proceed under the Competition Act 1998 than to give the proposed SDs. We note we are varying existing directions and when considering the matter we remain of the view that our regulatory powers are still the most appropriate tool, and therefore we proceed to vary SDs 2 and 3 under section 54 of the 2013 Act.

6 Consultation questions and next steps

- 6.1** We welcome views on the changes we propose to make to SDs 2 and 3 to implement our decisions for reducing risks to successful delivery of the NPA by 10 September 2021. In Annexes 3 and 4, we set out our proposed SDs 2a and 3a. We are particularly interested in views on the following questions:
1. Do the draft changes to SDs 2 and 3 effectively implement our decisions?
 2. Is the proposed deadline for SD3 reasonable?
 3. Do you have any other comments on how the proposed changes to SDs 2 and 3 have been drafted?
- 6.2** Responses to this consultation will inform our final legal instruments, which we plan to give in Q4 2021.
- 6.3** Our work to establish an effective way forward for the NPA Programme gives Pay.UK an opportunity to build further the capability and skills it needs to run an effective procurement. Our decision to narrow the scope of the CIS contract makes this easier to achieve. We are monitoring Pay.UK's work closely.
- 6.4** We are continuing to develop our regulatory framework for the NPA, taking account of the responses we received to our February CP that commented on proposals for mitigating risks to competition and innovation relating to when the NPA is operational. We plan to publish a policy statement on this topic in Q4 2021.

PUB REF: CP21/8

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