

Securing compliance with our specific directions and requirements

Guidance on extensions
and exemptions

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1 Introduction

Overview

- 1.1** The Payment Systems Regulator (PSR) is the economic regulator for the payment systems industry in the UK. We were established under the Financial Services (Banking Reform) Act 2013 (FSBRA) as an independent subsidiary of the Financial Conduct Authority (FCA). We have the power under FSBRA to make specific directions and requirements that regulated parties must comply with.
- 1.2** Our rules, decisions and guidance apply to the participants of the payment systems we regulate. These are defined as:
1. operators of regulated payment systems
 2. payment service providers
 3. infrastructure providers
- 1.3** It is important that regulated parties comply with our specific directions and requirements. We take non-compliance very seriously. We have a range of regulatory powers to ensure compliance, up to and including taking enforcement action. Our [Powers and Procedures Guidance](#) (PPG) gives further details of the steps we can take.
- 1.4** We recognise that there may be circumstances where it is appropriate to grant extensions or exemptions to the specific directions or requirements. We consider that these should only be granted in limited circumstances so as not to dilute the effectiveness of our interventions. Otherwise, regulated parties should take all steps to ensure compliance. This guidance sets out the principles that we will apply when deciding whether to grant an exemption or extension request from a regulated party.
- 1.5** If a regulated party is concerned that it may not be able to comply with its obligations, we expect it to contact us at the earliest opportunity to engage in a regulatory dialogue.¹ A regulated party in this situation should tell us how it will mitigate the risk to those who use its service, or to the market as a whole. The regulated party should also explain what steps it is taking to ensure compliance and how long it thinks these will take.

¹ [General Direction 1: Cooperative relationships with the PSR](#) (2020) imposes an obligation on participants and regulated persons to deal with us in an open and cooperative way. This includes notifying us if they become aware of information that suggests that a failure to comply with any of our directions, requirements or other obligations may have occurred, or may occur in the foreseeable future.

Scope of the extensions and exemptions guidance

- 1.6** This publication provides general guidance under section 96 of FSBRA on extensions and exemptions in relation to specific directions and requirements imposed under FSBRA. The guidance only applies where the right to grant an exemption or extension has been written into the direction or requirement itself. This guidance adheres to our general duties and regulatory principles (sections 49 and 53 of FSBRA).
- 1.7** This guidance sets out the principles that we will consider when deciding whether to grant an extension or an exemption. This guidance only applies to specific directions or requirements under sections 54 or 55 of FSBRA that contain a provision for us to allow such extensions or exemptions.
- 1.8** We nevertheless expect regulated parties to notify us of any concerns about their ability to comply with specific directions and requirements. Under [General Direction 1](#) (GD1), regulated parties are obliged to discuss ways forward with us openly. In such circumstances, we will take into account the factors set out in this guidance, along with the factors outlined in the [Administrative Priority Framework](#) (APF). The circumstances in which we will take this approach include taking enforcement prioritisation decisions or considering whether to vary or revoke a specific direction or requirement.
- 1.9** This guidance does not apply to generally applicable requirements.² It also does not apply to extensions or exemptions in the context of remedies that use our powers under the Competition Act 1998 or part 4 of the Enterprise Act 2002.
- 1.10** For the purposes of this guidance, we use the term 'regulated party' to refer to any entity that is subject to specific directions or specific requirements from us.
- 1.11** We may revise our approach from time to time to reflect changes in best practice, the law or our developing experience in performing our functions.
- 1.12** We will apply this guidance flexibly. This means that we may adopt a different approach where we think it is appropriate to do so, having considered all the relevant circumstances. When a specific direction or requirement allows us to grant extensions or exemptions and stipulates specific factors for us to consider in deciding whether to do so, we will prioritise those factors above this guidance.

² A 'generally applicable requirement' here refers to either a general direction imposed under section 54 of FSBRA or a generally applicable requirement imposed under section 55 of FSBRA.

2 Key factors in deciding to grant an exemption or extension

2.1 It is crucial that all regulated parties are incentivised to comply fully with our directions if our strategic³ and statutory⁴ objectives are to be met. We therefore expect that it will be appropriate to grant extensions or exemptions only in limited circumstances, where doing so allows us to ensure the delivery of our general duties and regulatory principles (sections 49 and 53 of FSBRA), and bearing in mind our duty to ensure coordination with other regulators (as per section 98 of FSBRA).⁵

2.2 When deciding whether to grant a request for an extension or exemption, we will consider:

- Whether granting an exemption or extension would:
 - adversely impact payment systems users
 - undermine any of our statutory objectives, including whether doing so would help or hinder the promotion of competition and innovation that benefits UK payments users, as well as the protection of those users
 - undermine the priorities set out in our five-year strategy
 - adversely impact the improvements we seek, including evidenced benefits

If granting the request undermined these objectives, we would be unlikely to grant it.

- The context in which the specific direction arose, including the underlying policy aims and the key factors set by the specific direction or requirement.
- The burden that not granting the request would place on the regulated party, as well as any impact of granting the request on businesses and consumers more widely.
- In relation to extension requests, the steps the regulated party has taken to ensure that it will comply with the rules in a timely manner and that any risks to service users and/or markets have been mitigated.

3 psr.org.uk/publications/psr-strategy-documents/the-psr-strategy/

4 legislation.gov.uk/ukpga/2013/33/part/5/crossheading/general-duties-of-regulator/enacted

5 This includes:

- in relation to the Bank of England, its Financial Stability Objective under section 2A of the Bank of England Act 1998
- in relation to the FCA, its strategic objective and operational objectives under section 1B of the Financial Services and Markets Act (FSMA) 2000
- in relation to the Prudential Regulation Authority (PRA), its general objective under section 2B of that Act

- 2.3** We are more likely to grant an exemption or extension when an applicant provides evidence that they will not be able to comply with a direction or requirement due to circumstances beyond their control that they could not have reasonably planned for or mitigated against.
- 2.4** When appropriate, we will make the extension or exemption conditional on the applicant taking steps to ensure compliance within an appropriate timeframe or through alternative means.
- 2.5** Where a regulated party's compliance with the direction or requirement would no longer achieve the purpose for which it was originally given, it is likely that an extension or exemption would not be the most appropriate course of action. Rather, we may consult on whether a variation to the direction or requirement is more appropriate.
- 2.6** We will consider any extension or exemption request on a case-by-case basis and will consider the specific facts of each individual application.
- 2.7** In the following sections, we provide guidance on the factors that are likely to apply to exemptions and to extensions.

Guidance on factors specific to exemptions

- 2.8** As noted in paragraph 2.1, we are likely to conclude an exemption is appropriate only in limited circumstances. In addition to the general factors outlined above, and any factors identified by the specific direction or requirement itself, we will take into account:
- whether implementing the direction or requirement would cause the regulated party to be non-compliant with a separate regulatory or legislative obligation
 - whether the requirements should no longer apply to the regulated party due to changes in its business model or structure
 - whether a regulated party will discontinue providing relevant services within a defined period of time
- 2.9** In the last scenario, we would expect the regulated party to tell us how any risks to our objectives would be mitigated while it continues to operate. We would likely grant an exemption only where this was for a very limited period of time.
- 2.10** We may also consider whether a variation to the requirement, following consultation, is more appropriate than an exemption, or whether an interim or temporary exemption, in conjunction with or followed by a policy consultation, is warranted.
- 2.11** Where a regulated party thinks that its circumstances have changed, or that it should no longer be in scope of a specific direction, it should tell us at the earliest opportunity.

Guidance on factors specific to extensions

- 2.12** When evaluating whether to grant an extension request, we start from the position that regulated parties should have taken all appropriate steps to ensure compliance with their obligations. Regulated parties should be able to demonstrate that there are circumstances outside of their control, which they could not have reasonably planned for or mitigated against, that will prevent them from implementing the specific direction or requirement in the specified time period.
- 2.13** We are not likely to consider the following as appropriate reasons for an extension:
- constraints on the resources of a regulated party arising from the need to comply with competing regulatory demands
 - a regulated party has outsourced its delivery to a third party that faces issues with delivery
- 2.14** Even where we agree to an extension, we may set a new compliance deadline that is shorter than that proposed by the affected party.
- 2.15** In certain circumstances, we may decide it is not appropriate to grant an extension, following which we will monitor the regulated party while it achieves compliance. This does not preclude the possibility that we could take steps leading to enforcement action.
- 2.16** When we review applications that have met the standards outlined above, a non-exhaustive list of factors that we will consider includes:
- evidence of best endeavours towards achieving compliance by the original deadline
 - details of challenges beyond the firm's control preventing compliance by the original deadline
 - information and evidence on what steps the regulated party has taken to overcome these issues
 - evidence of a clear and achievable plan to deliver compliance within the proposed timeline for extension
 - the extent to which delayed compliance would affect the policy objectives behind the specific direction or requirement
 - what steps the regulated party has taken to mitigate any risks to service users or markets

3 How to apply for an extension or exemption

- 3.1** When a regulated party wishes to apply for an exemption or extension, we expect it to provide detailed information. This should include sufficient evidence to satisfy us that an exemption or extension is appropriate in the circumstances, in particular by reference to the relevant factors identified in this guidance. In line with their obligations under GD1, regulated parties must ensure that applications for an exemption or extension do not contain inaccurate, misleading or false information. The applicant must notify us should it become aware of any relevant change to information it has previously provided in the context of its application.
- 3.2** When considering whether to request an extension or exemption, regulated parties should not make their own judgements or reach decisions that are properly for us.
- 3.3** In certain circumstances, we will require specific information to enable us to make a decision.
- 3.4** Application forms for individual directions can be found here: psr.org.uk/publications/forms/
- 3.5** Where there is no application form, regulated parties should write to us at: PSRSecuringCompliance@psr.org.uk

What happens when an application is submitted?

- 3.6** We will acknowledge all applications we receive. During our assessment, we may ask for further information. We may be able to reach an initial view on requests quickly – for example, where the application is clearly not warranted by reference to factors outlined in this guidance. In other cases, we may need to undertake a fuller assessment, including discussions with the applicant, before we can come to a decision. Typically, we would seek to reach a decision within one month of receiving full information in relation to an application, where possible.
- 3.7** Extensions or exemptions will not be given retrospectively to approve actions or compliance failures that have already occurred. Giving an extension or exemption does not prevent us from taking enforcement action on any compliance failure that pre-dates the extension or exemption. We expect regulated parties to tell us before the deadline if they are facing difficulty in complying with our directions or requirements. This allows us to work with the firm in a timely manner to meet these challenges.
- 3.8** There are no statutory deadlines for assessing extension or exemption requests. In line with their obligations under GD1, regulated parties who wish to apply for an exemption or extension should submit any requests without delay after becoming aware they will not achieve compliance with a specified deadline or if an exemption is deemed urgent. We are more likely to grant requests that are fully specified, reasoned and supported by relevant evidence. Ultimately, it is incumbent upon the regulated party applying for an extension or exemption to satisfy us that its request is justified.

- 3.9** We will likely consider whether there are any alternative measures available that could achieve our objectives, notwithstanding the request for extension or exemption. Any requests we grant may be subject to strict safeguards and conditions to mitigate the effects of the extension or exemption, considering the objectives served by the specific direction.

What happens following a decision?

- 3.10** After considering whether to grant an extension or exemption, we will issue a response letter or email setting out our decision. Where the exemption or extension is granted, we may publish non-confidential details of the request and our decision on our website to be transparent with firms about any precedent that is set and if it is in the public interest to do so. In addition, we may produce FAQs on rejected applications to be transparent with firms about the rationale for rejection.

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