

Specific Direction 3a varying Specific Direction 3 (Procurement: FPS)

December 2021

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Specific Direction 3a varying Specific Direction 3 (Procurement: FPS)

1 Recitals

Whereas:

- 1.1** The Payment Systems Regulator (the PSR) gave Specific Direction 3 under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act). It requires the operator of the Faster Payments Scheme (FPS) to ensure that central infrastructure services for FPS are competitively procured. It came into force on 20 June 2017.
- 1.2** At the same time, the PSR gave Specific Direction 2 to the operator of Bacs, with similar requirements for Bacs.
- 1.3** Pay.UK is the current operator of FPS and Bacs. It is also responsible for facilitating the delivery of the New Payments Architecture (NPA). The NPA is intended to replace the current FPS and Bacs infrastructures, in line with the strategy set out in 2016 by the Payments Strategy Forum.¹
- 1.4** To comply with Specific Directions 2 and 3, Pay.UK has been undertaking a competitive procurement for central infrastructure services for the NPA. Its intention was that transactions currently executed using the FPS and Bacs infrastructures would be executed using the NPA infrastructure.
- 1.5** The PSR has concluded that there are unacceptably high risks in Pay.UK's NPA delivery programme. To mitigate these risks, the PSR has decided to change the requirements for the operator's procurement of FPS central infrastructure services.
- 1.6** This specific direction varies Specific Direction 3 to give effect to the PSR's changes to the requirements on the operator of FPS.

¹ See the Forum's publication [A Payments Strategy for the 21st Century](#)

2 Powers exercised and purpose

- 2.1** The PSR makes this specific direction in accordance with section 54(3)(c) (*Regulatory and competition functions: Directions*) of the Act. In accordance with section 54(3)(c), this specific direction applies in relation to persons of a specified description.
- 2.2** The PSR has had regard in particular to the following provisions of the Act:
- a. sections 49 to 53 (*General duties of Regulator*)
 - b. section 62 (*Duty to consider exercise of powers under Competition Act 1998*)
- 2.3** The PSR gives this direction for the reasons set out in its policy statement CP21/8, *Lowering risks to delivery of the New Payments Architecture* (July 2021)² and its response paper RP21/2, *Lowering risks to NPA delivery: Final changes to Specific Directions 2 and 3* (December 2021)³.
- 2.4** The purpose of this direction is to implement changes to the requirements of Specific Direction 3 (Procurement: FPS).

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

3 <https://www.psr.org.uk/publications/policy-statements/rp21-2-mpa-final-changes-to-sd2-sd3/>

Direction

NOW the PSR gives the following specific direction to the operator of FPS:

3 Variation of SD3

3.1 Specific Direction 3 (Procurement: FPS)⁴ is varied as follows.

3.2 In paragraph 1.8 of the recitals, for “Section 4”, substitute “Section 5”.

3.3 At the end of the recitals, insert:

“1.8a In May 2018, the *operator* applied under Section 4 for a later date than 1 July 2020 to be specified for the purposes of paragraph 2.1. The *Payment Systems Regulator* subsequently specified 30 June 2023.

1.8b In December 2021 the *Payment Systems Regulator* gave Specific Direction 3a to vary this specific direction. This implemented its decisions on lowering risks to successful delivery of the *New Payments Architecture*⁵. In particular, Specific Direction 3a varies Specific Direction 3 as described in paragraphs 1.8(c) to 1.89(e).

1.8c The *operator* must only procure the functionality needed to process *single push payments* unless the *Payment Systems Regulator* has not objected to the inclusion of other functionality in the contract.

1.8d The deadline for the purposes of paragraph 2.1 is changed from 30 June 2023 to 1 July 2026. This took account of all relevant circumstances, including the *operator’s* plans and included a period for contingency.

1.8e Section 4 is varied so that the *Payment Systems Regulator* may change the deadline that applies for the purposes of paragraph 2.1 where this is required because of the implementation of the *New Payments Architecture*. This gives flexibility to the *Payment Systems Regulator* to change the date, and in doing so recognises that such flexibility is appropriate given the circumstances of the programme to deliver the *New Payments Architecture*, particularly its size and scale.”

3.4 In paragraph 2.1, for “1 July 2020⁶” substitute “1 July 2026”.

4 See: <https://www.psr.org.uk/publications/general/specific-direction-3/>

5 PSR CP21/8, [Lowering risks to New Payments Architecture delivery](#) (July 2021).

6 By virtue of an extension given by the PSR under Section 4 of Specific Direction 3, the date applicable immediately before this variation was 30 June 2023.

3.5 After paragraph 2.3, insert:

“2.3a The *operator* must ensure that any *central infrastructure contract* in place on the date set out in, or specified under, paragraph 2.1:

- provides for the *minimum scope* but
- does not provide for services or system functionality beyond the *minimum scope* (“the additional functionality”) unless:
 - a. it has given notice of its intention to include the additional functionality under the non-objection process (see Section 2A) and
 - b. the *Payment Systems Regulator* has given notice in writing that it does not object

2.3b The *operator* must comply with any conditions given under paragraph 2A.6.”

3.6 After Section 2, insert:

“

2A Non-objection process

2A.1 If the *operator* gives notice under paragraph 2.3(a), it must do so in writing.

2A.2 In the notice, the *operator* must set out:

- a. the additional functionality
- b. why it considers it appropriate to include the additional functionality
- c. details of its consultation in relation to including the additional functionality (including on the implications for competition, innovation, service users and the development of the *New Payments Architecture*), including the responses and its consideration of them
- d. information not covered by sub-paragraphs (a) to (c) that it considers will assist the *Payment Systems Regulator*, in particular information relevant to the matters set out in paragraph 2A.4

2A.3 The *Payment Systems Regulator* may:

- a. waive the requirement for the *operator* to provide any of the material mentioned in paragraph 2A.2 (to any extent)
- b. require further material that it considers appropriate for the non-objection process

- 2A.4** In deciding whether to object (and whether to attach conditions to not objecting), the *Payment Systems Regulator* will take into account matters it considers relevant, including:
- a. whether the *operator* has consulted interested parties adequately, and how it has taken their views into account
 - b. the implications for competition and innovation in payment services and related services. This includes:
 1. whether the additional functionality is a temporary or long-term measure
 2. whether the *operator* has given sufficient consideration to other ways of achieving similar user outcomes
 3. the implications for competition between *payment systems*
 - c. the implications for system resilience and risks, including those relating to any foreseen or planned migration of payments from other *payment systems*
 - d. the implications for service users including consumers and businesses, including any costs of the additional functionality
 - e. the implications for the timetable for the award of the contract and the delivery of the *New Payments Architecture*
 - f. the benefits of the additional functionality being included in the contract that will apply on the date set out in, or specified under, paragraph 2.1
 - g. the implications for the *operator's* ability to comply with all its obligations under this Specific Direction 3
- 2A.5** The *Payment Systems Regulator* will notify the *operator* in writing whether or not it objects.
- 2A.6** The *Payment Systems Regulator* may attach conditions to a notification that it is not objecting (for example, that only certain additional functionality may be included in the contract)."

3.7 In paragraph 3.1:

- a. Omit "in accordance with paragraph 3.2".
- b. For "Each report must include", substitute, "Each report must, as a minimum, include".

c. After sub-paragraph (c) insert:

"d. A description of the *operator's* progress in relation to paragraph 2.3(a).

e. Information about any plan to give notice under paragraph 2A.1."

3.8 For paragraph 3.2, substitute:

"3.2 In respect of a report required under paragraph 3.1, the *Payment Systems Regulator* may:

- a. add to the matters that the *operator* must include in the report
- b. remove the requirement to cover any particular matter in the report
- c. suspend the requirement on the *operator* to provide a report, either for a specified period or indefinitely
- d. change the frequency of the reports
- e. require the *operator* to submit a report on, or before, a different date
- f. require the *operator* to submit a report by reference to an event

It will notify the *operator* of any of these changes in writing.

3.3 A change made under paragraph 3.2(a) or (b) can apply to a specific report, a number of reports, for a period of time or for an indefinite period.

3.4 The *operator* must submit a report on or before 31 March, 30 June, 30 September and 31 December each year. The first report is due on 31 March 2022. This reporting requirement applies until the *Payment Systems Regulator* notifies the *operator* in writing that it has ended.

3.5 The *Payment Systems Regulator* may publish a report, or require the *operator* to publish it. The *operator* must comply with any deadline that the *Payment Systems Regulator* sets for this.

3.6 The *Payment Systems Regulator* will take account of issues around confidentiality in deciding what should be published. In particular, it may require the *operator* to provide a version of the report that excludes confidential information for publication."

3.9 In Section 4 (Application to the *Payment Systems Regulator* to extend the date for compliance for transitional arrangement in relation to the *New Payments Architecture*):

- a. In paragraph 4.1, for "1 July 2020", substitute "1 July 2026 (or a previously specified date)"

b. Omit paragraphs 4.3 and 4.4

c. For paragraph 4.5, substitute:

"4.5 Applications under paragraph 4.2 must include:

- a. the date the *operator* proposes is specified
- b. an explanation of why, in the *operator's* view, a later date is required because of the implementation of the *New Payments Architecture*
- c. the steps the *operator* has taken to meet its obligations under this specific direction
- d. an explanation of the consequences, in the *operator's* view, of its application being rejected
- e. information about the alternatives to making an application that the *operator* has considered, and its reasons for rejecting them
- f. information about any engagement the *operator* has had with its stakeholders about whether to make an application, including the extent and nature of the engagement and the views of stakeholders."

d. After paragraph 4.5, insert:

"4.5a The *Payment Systems Regulator* may require further material that it considers appropriate to its determination of the application."

3.10 For paragraph 5.1(b), substitute "the steps which the *operator* is taking, or proposing to take, to mitigate any risks arising from its non-compliance".

3.11 In the table in paragraph 9.5:

a. in the definition of "central infrastructure", after "FPS" insert "(or a system that forms part of the *New Payments Architecture*)"

b. after the definition of "ISO 20022 messaging standard" insert:

<i>"Minimum scope</i>	the services and system functionality needed to process <i>single push payments</i> "
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c. at the end, insert:

<i>"Single push payment</i>	A payment that is initiated by or on behalf of the payer where both submission to and output from the <i>central infrastructure</i> happens on the same day using single payment messages. It can be an immediate payment or any other same-day payment, including a diarised payment"
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4 Application of Specific Direction 3a

4.1 This specific direction applies to the operator of FPS.

5 Commencement

5.1 This specific direction comes into force on 1 January 2022.

5.2 It continues in force until the PSR revokes it.

6 Citation

6.1 This specific direction may be cited as Specific Direction 3a varying Specific Direction 3 (Procurement: FPS).

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