

Securing Compliance:
Proposed Extensions and
Exemptions Guidance

Non-confidential
stakeholder submissions
to May 2024 consultation
(CP24/6)

July 2024

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A separate confidential response was received from Pay.UK.

Names of individuals and information that may indirectly identify individuals have been redacted.

Bank of England

From: [REDACTED] >

Sent: 10 June 2024 17:39

To: [REDACTED] [REDACTED]

[REDACTED]

Subject: RE: [EXTERNAL] Securing Compliance PSR Guidance

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Official Green

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Hi [REDACTED] – was lovely to speak the other day. Quick suggested working is below.

To recap the practical examples:

- There may be instances where a transitional arrangements are put into place or maintaining for a sponsor that wants to exit from a relationship, so that the offboarding firm does not go out of business while there is no arrangement in place.
- We may sometimes not be able to offer onboarding slots for an extended periods meaning a firm couldn't get direct access for a period.
- There are certain types of firms we do not provide access too. One example are small EMI/PI; we only grant access to authorised EMI/PI.

For specific wording – language in 2.3 is helpful. The text could go further to provide specific examples such as the below. This would provide further transparency.

- We may grant an exemption where a regulated party is unable – by virtue of its regulatory status – to meet the access criteria set out by an operator of regulated payment systems or to hold an account in the Bank of England's RTGS system. [Maybe after 2.11?]
- Circumstances outside a regulated party's control may include where the Bank of England does not have any onboarding slots, where applicable, within the timeframe originally envisaged.

(I also spotted a type in 1.2 of the guidance – I'm fairly sure 1.2.2 should be payment service providers, not payment systems providers)

HMRC

Securing compliance: proposed extensions and exemptions guidance

Name: [REDACTED]

Organisation: Government Banking

Contact No: [REDACTED]

This response has been compiled from end user views of Government Banking and 8 of our key customers including Department for Work and Pensions and HM Revenue & Customs who are the largest users of payment services across government.

Although we are not a regulated entity and so not directly impacted by the provision of extensions and exemptions, we are interested in these topics and how they might impact the service we receive from our suppliers who are in scope.

Consultation questions

Question 1. Do you have any comments on the draft guidance for considering extensions and exemptions to our specific directions?

Answer:

We consider that the guidance proposed provides clarity over when extensions and exemptions could be permitted i.e., only in exceptional circumstances and ensures that the effectiveness of the specific directions is not weakened by too many organisations failing to take the appropriate steps to comply within the required period.

We are aware that there are many changes taking place across the industry both at scheme and individual payment service provider level including major transformation programmes. These could impact an organisation's ability to make the relevant changes to comply immediately. It will be important that, when setting deadlines for compliance, consideration is given to what is realistically achievable by most organisations so only those with extreme or unexpected issues will need to apply for an extension.

Publishing standard guidance increases transparency and allows the regulated parties to see if they are likely to qualify for an exemption/extension and what they need to do to apply. Where an exemption/extension is granted, all parties need to be aware to avoid any confusion between the payment service providers.

Question 2. Do you agree with the key factors we propose for considering extensions?

Answer:

Yes, we agree with the key factors for considering extensions.

It is important that the impacts of granting or not granting the extension are considered to ensure there are no unexpected consequences for other parts of the ecosystem including end users i.e., businesses and consumers.

We also agree that any request for an extension must include evidence of why the organisation is unable to comply with the specific direction within the defined period and what steps they have and will take to become compliant. This will provide the assurance necessary that the need is exceptional and ensure fairness to other regulated organisations.

To maintain the integrity of the process of granting exemptions, it will be important that they are only granted for a short period e.g., to assist where there are competing priorities, infrastructure changes or training and testing is needed.

Question 3. Do you agree with the key factors we propose for considering exemptions?

Answer:

Yes, we agree with the key factors proposed for considering exemptions.

As above, it will be important to consider the impacts of the decision on the wider ecosystem so there are no unintended consequences including for end users.

Question 4. Are there any other factors you think we need to consider that are not covered in the proposed guidance?

Answer:

In some circumstances, it may be useful to adopt a staggered approach to applying the directions so those organisations that will have the most impact are required to comply sooner. An example of this working successfully was the roll out of Confirmation of Payee with the main banks being in scope of the direction ahead of smaller entities. Provided the communications are clear, this would give participants time to prepare and launch the changes to become compliant within their defined period.

HSBC

From: [REDACTED]
Sent: 16 May 2024 18:23
To: PSRSecuringCompliance <PSRSecuringCompliance@psr.org.uk>
Cc: [REDACTED]
Subject: HSBC UK Bank plc: CP24/6 - Securing Compliance

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Good afternoon

I am writing to confirm that **HSBC UK Bank plc** has reviewed the consultation on proposed guidance that sets out the factors the PSR will use to decide whether to grant an extension or exemption when it has issued a specific direction or specific requirement.

The guidance is broadly aligned to our understanding and expectations on extensions and exemptions. Given the number of other open consultations and requests for information, we will not be responding on this occasion.

Best Regards

[REDACTED]

UK Finance



UK Finance

UK Finance response



PSR Consultation on Exemptions and Extensions

3 June 2024

UK Finance Response

This response is sent to PSRSecuringCompliance@psr.org.uk

General comments

We welcome the PSR consulting on its proposed approach to considering extensions and exemptions¹ and we agree this will provide some clarity over the PSR's decision making in this context.

Below we have captured general comments on approach from members, rather than addressing the individual consultation questions.

1. Statutory Objectives

First of all, while we support clearer communication on decision-making, we are concerned that the PSR views the impact on its short-term strategy as one of the items under consideration. Instead, its supervisory approach should be based on, and supportive of, its core **statutory objectives** of promoting competition, encouraging innovation, and ensuring the interests of service users.

2. Extensions versus exemptions

The PSR should be clear that when considering the '*impact on payment services users*', the bar should be different for extensions and exemptions. When deciding on an extension, the impact may be for a short period of time, and therefore could on balance be reasonable. The use of extensions can help to smooth implementation and allow firms to ensure they are delivering the optimum solution for their customers, rather than seeking to rush the build to meet a tight deadline. Therefore, the counterfactual should also be considered in extension requests (e.g. what could the impact on PSUs be if the PSR does not allow the extension, could it risk resilience or platform performance, safety, speed or availability). Firms should not be forced to trade between direction compliance on the one hand and platform resilience, performance, safety, speed or availability on the other and we recommend that considerations of these factors should be directly relevant to any decision to extend a compliance deadline.

With exemptions, understandably the PSR would need to ensure that the impact on PSUs would be extremely limited, given it would mean that the direction is not going to be implemented at all by that firm.

¹ <https://www.psr.org.uk/media/ahdl2vnt/cp24-6-securing-compliance-consultation-paper-may-2024.pdf>

While we acknowledge that exemptions will be relatively rare, we think the principles of "same activity same regulation" and "level playing field" should form part of the exemption approach, so that one firm does not have an unfair advantage over another firm, or one payment type or sector does not have an unfair advantage over another payment type or sector. It can also potentially reduce the risk of adverse outcomes (i.e. fraud moving etc).

3. Competing Regulatory Demands

In conducting research with our members for the Future of Payments Review in 2023, we found that 91% of all change budget and capacity went on meeting regulatory change or requirements. This can have a directly negative effect on time and budgets available for innovation and improving experiences for payments service users.

Ensuring regulatory deliverables are both proportionate and reasonably sequenced is vital to ensuring a smooth implementation by industry. By taking this approach, the PSR would reduce the number of occurrences where firms seek an extension based on competing regulatory demands. However, where the PSR has not sufficiently accounted for other regulatory programme deliverables (as has been the case in the recent past, even when a conflict is evident from the Regulatory Initiatives Grid, for example), then it is justified that firms call this out. The PSR must, therefore, consider this when deciding upon extension requests. The approach currently set out in the consultation is not helpful, particularly in an environment where there is significant regulatory change in the payments industry.

4. Too Narrow Approach?

4.1 High bar The draft guidance notes that extensions will only be granted to firms in "*circumstances beyond their control, which they could not have reasonably planned for or mitigated against, will prevent them from implementing the specific direction or requirement in the specified time period.*" Our members view this as a very high bar and that more flexibility is required. Firms do of course reasonably plan for technological difficulties, but it is often the case that complexities and dependencies are only revealed when the detailed work begins.

Furthermore, firms must receive detailed specifications from the PSR (and/or other bodies that industry is reliant upon, such as PayUK, OBL, Bank of England), in sufficient time to be able to design their implementation programmes. If firms start designing programmes early, prior to receiving final specifications, then this work is often at risk of being 'throwaway', given the detailed specifications may result in work needing to be changed. Throwaway work ultimately drives up the cost-of-service provision to consumers and merchants.

That being said, if firms begin the scoping too late (e.g. some time after the PSR and/or other bodies share the final specifications), they should be treated differently than firms that began the planning promptly and attempted to execute in earnest and in good faith.

4.2 Industry-Wide Concern Industry would like the PSR to take account of any direction which leads to a broad industry response that the proposed timeline is too tight, preferably by extending the deadline for all or alternatively responding to requests for extensions from individual firms. This may include situations where a broad industry response highlights concerns to the PSR that their direction/requirement lacks sufficient clarity for firms to be able to design and build their implementation programme. In circumstances where industry is consistently calling for more clarity from the PSR regarding how to interpret their incoming rules, the PSR must respond to industry concerns in a timely manner, and where clarity has not been sufficiently provided and concerns remain, then the PSR must consider this when determining extensions. Where the PSR has granted a direction compliance extension to several firms, it should reconsider the original deadline and apply the extension to all.

One example of this was with the SD10 (original COP direction), whereby the PSR recognised that industry was facing significant challenges with the implementation deadline. The PSR therefore proactively engaged with industry to understand the challenges being faced, moved the original deadline, and was pragmatic in its approach to considering extensions and exemptions.

4.3 Innovation Many industry participants have a view that regulators may at times under-appreciate what firms need to do operationally (including technologically, customer communication and contracts, channel changes, processing and customer facing staff training and process changes) to comply with a new regulation or direction. The pace and extent of technological change in firms of all sizes is increasing.

Conducting technological change to payment and customer platforms must be done safely and securely. Firms plan their “tech stack” many months (often at least one to two years) in advance. Change windows are locked in and co-ordinated to minimise resiliency risks, impacts on users, costs and resources. Directions issued with an underappreciation of technological impacts and too tight timelines do not allow firms to smooth the required change with other existing planned changes, with the consequence that planned enhancements to customer experiences or product innovation are deprioritised. Directions can also be issued at a time when change and investment schedules are committed - resulting in organisation having to drop other important work.

Taking into account the PSR’s statutory objectives, we suggest that the impact on innovation and customer experience is taken into account when issuing directions in the first place (so as to minimise the need for extensions) but also when granting exemptions or extensions. Unrealistic timing expectations incentivise an ‘invest-to-comply’ approach rather than an approach that allows firms to build the required change with priority on efficiency, safety and the customer end to end proposition.

4.4 Operational Complexity. On a related note, the PSR must do more to accurately assess the operational complexity required for firms to implement its directions and/or requirements. The PSR often sets unachievable deadlines for industry, and therefore must consider what it takes to design, build, test and educate (staff and customers) on the incoming requirements. This is often a key driver behind firms seeking extensions, and can lead to lengthy conversations with the PSR, during the implementation phase, which is an inefficient use of firms' and the regulator's time and only serves to amplify avoidable

tensions. If the PSR sufficiently considers the operational complexity upfront (through engagement with industry), then more reasonable delivery timeframes will be established from the outset, leading to a more efficient overall process, better user outcomes, less risky and 'bare minimum' implementation, and ultimately, a reduction in extension requests.

4.5 Outsourcing If a firm has outsourced delivery to a third party which will be responsible for the necessary changes required, the guidance states that is not an appropriate reason for extension. Firms accept it is their regulatory responsibility to deliver the direction outcomes, but the approach seems to many firms to under-appreciate the importance and extent of outsourcing in the payments industry. Firms do not agree with the rather stark approach set out in the draft guidance. Incidents that cause a supplier to fail to deliver within contractual timelines, and therefore operate outside the remit of commercial control available to a contracting party, need to be considered. We also submit that the factors that would apply to contracting parties directly should, to a degree, also apply to the outsourced servicer (such as facing issues beyond its own control).

4.6 Short-term alternatives It would be helpful if the approach included more support for extensions where the firm, or sector, in question can demonstrate a temporary alternative workaround that delivers the required outcomes, or the vast majority of them, within the direction's timeframe.

5. Scope for extensions (and APP)

We welcome the PSR's statement that they will apply the guidance flexibly, so that they may '*adopt a different approach where we think it is appropriate to do so having considered all the relevant circumstances*'. However, we note that this is only in the case of directions with scope for exemptions or extensions. We note that the APP Scams reimbursement directions (SD18, SD19 and SD20) do not contain references to exemptions or extensions – therefore we presume that exemptions and extensions will not be granted for the reimbursement rule (other than the already outlined exclusions of credit unions, municipal banks and national savings banks) and the PSR will lead straight into enforcement.

In this particular circumstance, the PSR has not provided sufficient clarity as to the policy or implementation requirements in advance of the deadline. This means that firms are unable to plan their implementation timelines until they have the full specifications / policy clarity. deadline.

Leaving APP to one side, this gap leaves no framework at all for how the PSR will address extension requests - which will continue to be made by firms if the PSR maintains its current course of imposing unrealistic timelines on its regulatory interventions. It also seems counter to the (welcomed) approach from the PSR's supervision team to improve relationship management and supervision.

6. Retrospective extensions and exemptions

The wording in the consultation appears unnecessarily inflexible in respect of retrospective extension or exemption requests. While we appreciate the intended outcome of the current wording, we believe that:

- The PSR should at least permit exemptions or extensions to apply from the date of application from a directed firm, to enable the PSR to grant such exemptions when the time taken for its own analysis of the application would take the firm into breach of compliance.
- In light of the PSR's approach to flexibly apply the guidance, the wording of 3.7 should be adjusted to give the PSR leeway in interpreting this requirement. We have suggested wording to this effect below.

Suggested alternate wording could be:

“The PSR does not anticipate granting extensions or exemptions retrospectively to approve actions or compliance failures that have already occurred. In the event that a firm makes an application for an extension or exemption after such a firm is in breach of a direction's requirements, or in such a way that makes it impossible for the PSR to respond to the exemption request before the required date of a direction, the PSR will consider any decision on enforcement action in light of the evidence provided by a firm, the reasons for the firm's late application for an extension or exemption and the PSR's eventual decision on whether an extension or exemption for the applicant is reasonable.”

PUB REF: CP24/6 Submissions

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