

Specific Direction 3 on competitive procurement of central infrastructure (FPS)

June 2017

Varied December 2021

This is a consolidated version of Specific Direction 3 as varied by Specific Direction 3a

Specific Direction 3 (Procurement: FPS)

1 Recitals

Whereas:

- 1.1** The *operator* of Faster Payments Scheme (FPS) has been operating the FPS payment system with the use of *central infrastructure* services provided under the existing *central infrastructure* contract. It is noted that the existing *central infrastructure* contract expires automatically on 30 June 2020.
- 1.2** For the reasons set out in its infrastructure market review final report¹ and remedies decision², the *Payment Systems Regulator* has concluded that any future contract for *central infrastructure* services must be competitively procured. The *Payment Systems Regulator* also concluded that such a procurement should take place at least every ten years.
- 1.3** In order to ensure that any competitive procurement is undertaken in the absence of barriers to competition created by the use of bespoke *messaging standards*, the *Payment Systems Regulator* has further concluded that the *central infrastructure* services provided under the first *central infrastructure* contract competitively procured in accordance with this specific direction should be capable of receiving and sending all relevant messages (used in the payment system) in the *ISO 20022 messaging standard*. This would not apply to contracts following the first competitively procured contract.
- 1.4** The *Payment Systems Regulator* has concluded that in order for the benefits of competition to arise as soon as possible, *central infrastructure* services should be supplied in accordance with a contract selected following a competitive procurement at the earliest opportunity. In accordance with the existing *central infrastructure* contract this is after it expires automatically on 30 June 2020.
- 1.5** Significant changes are taking place in the payments industry, in particular in relation to the *Forum's* proposed implementation of the anticipated *New Payments Architecture*. The dates for implementation are not yet confirmed. Therefore, this direction makes

1 PSR MR15/2.3, *Market review into the ownership and competitiveness of infrastructure provision: final report* (July 2016).

2 PSR MR15/2.5, *Market review into the ownership and competitiveness of infrastructure provision: remedies decision* (June 2017).

provision to amend the date for compliance for transitional arrangements in relation to the *New Payments Architecture*.

- 1.6** The *Payment Systems Regulator* will consider whether to amend the date for compliance by reference to whether, in its opinion, it would not be efficient to run a competitive procurement in accordance with this specific direction for the *central infrastructure* contract from 1 July 2020, because that contract is expected to be of short duration due to the implementation of the *New Payments Architecture*. The *Payment Systems Regulator* may impose conditions requiring the *operator* to ensure that any contract in place from 1 July 2020 until the date specified is in the interest of service users and provides value for money, for example, where appropriate, by requiring a more limited procurement to take place, as provided for by paragraph 4.7.
- 1.7** The *operator* of FPS would need to make arrangements to allow all system participants to have migrated, by the date the existing *central infrastructure* contract will terminate, to either:
- a. the implementation of the *New Payments Architecture*, or
 - b. a competitively procured *central infrastructure*, which may, where applicable, be provided under a transitional contract in anticipation of the implementation of the *New Payments Architecture* in due course.
- 1.8** The *Payment Systems Regulator* recognises that there may be exceptional circumstances where it would be appropriate to grant an exemption from the duty to comply with one or more of the obligations set out in this direction. Section 4 [5](#) therefore envisages the possibility of such an exemption being granted. This may be an exemption from some of the obligations set out in this direction, such that a more limited procurement exercise is undertaken, or it may be an exemption from all obligations set out in this direction. The latter would delay the requirement to undertake a competitive procurement to such date as is specified by the *Payment Systems Regulator* in its exemption decision, rather than requiring this to occur in accordance with the timeline envisaged in paragraph 4.7.
- 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*³. In particular, Specific Direction 3a varies Specific Direction 3 as described in paragraphs 1.8c to 1.8e.
- 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.

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

- 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.

Powers exercised and purpose

- 1.9** The *Payment Systems Regulator* makes this specific direction in accordance with section 54(3)(c) (Regulatory and competition functions – directions) of the Financial Services (Banking Reform) Act 2013 (the Act). In accordance with section 54(3)(c), this specific direction applies to persons of a specified description.
- 1.10** The *Payment Systems Regulator* has had regard in particular to the following provisions of the Act:
- a. sections 49 to 53 (General duties of regulator)
 - a. section 62(2)(a) (Duty to consider exercise of powers under Competition Act 1998)
- 1.11** The *Payment Systems Regulator* makes this direction for the reasons set out in its infrastructure market review final report and remedies decision.
- 1.12** The purpose of this specific direction is to ensure that if the operator of Faster Payments Scheme (FPS) procures any central infrastructure, it is procured competitively in accordance with this specific direction.

Direction

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

2 Requirement to procure

2.1 Subject to section 5, the *operator* of FPS must take such action as is necessary to ensure that any *central infrastructure* contract in place on or after 1 July 2026, or such later date as specified by the *Payment Systems Regulator* in accordance with section 4 below, has been procured in accordance with paragraph 2.2.

2.2 The procurement must include the following steps:

- a. development of a strategy for the procurement
- b. consultation with service-users, including PSPs and end users, and taking into account the views of service-users expressed in the context of the *Forum's* work where relevant
- c. fair and transparent engagement with *potential providers*
- d. development and execution of a transparent and objective process to shortlist *potential providers* for the *competitive tender*
- e. development and execution of a *competitive tender* that is based on transparent and objectively justifiable criteria, and is likely to attract two or more bids
- f. selection of the central infrastructure provider(s) in accordance with the *competitive tender* described at e)

2.3 In relation to any *central infrastructure* contract which is in place on the date set out in, or specified under, paragraph 2.1, the *operator* of FPS must ensure that the *central infrastructure* services provided under any such contract are capable of receiving and sending all relevant messages (used in the payment system) in the *ISO 20022 messaging standard*.

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.

2.4 The *operator* of FPS must ensure that any *central infrastructure* contract it enters into does not provide for the provision of *central infrastructure* services for a period exceeding ten years.

2.5 The *operator* of FPS must have regard to the work of the *Forum* in fulfilling its obligations under this Specific Direction 3, including in particular in relation to:

- a. establishing service-user needs for the payment system
- b. the proposal to create the *consolidated* operator
- c. the proposal to implement a common *messaging standard* for one or more *regulated payment systems*, including FPS
- d. the proposal to develop a *New Payments Architecture* for certain *regulated payment systems*
- e. the likely timing of the implementation of the proposals referred to in a) to d)

2A Non-objection process

2A.1 If the *operator* gives notice under paragraph 2.3a, 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 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 Reporting requirement

3.1 The *operator* of FPS must report to the *Payment Systems Regulator* on its work under this Specific Direction 3. Each report must, as a minimum, include:

- a. A description of the *operator's* progress in relation to the steps outlined at 2.2.

- b. Evidence demonstrating that, and a description of how, each of the requirements outlined at paragraph 2.2 has been, or will be, fulfilled, including:
 - 1. Evidence demonstrating that, and a description of how, the *operator* has taken into account the results of its consultation with service-users.
 - 2. Evidence demonstrating that, and a description of how, the *operator* has taken into account the results of its engagement with *potential providers*.
- c. Evidence demonstrating that, and a description of how, the requirement outlined at 2.5 has been, or will be, fulfilled, including the *operator's* plans in relation to any application it may make in accordance with Section 4.
- d. A description of the *operator's* progress in relation to paragraph 2.3a.
- e. Information about any plan to give notice under paragraph 2A.1.

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

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.

4 Application to the *Payment Systems Regulator* to extend the date for compliance for transitional arrangement in relation to the *New Payments Architecture*

- 4.1** The *Payment Systems Regulator* may specify a date later than 1 July 2026 (or a previously specified date) for the purposes of paragraph 2.1 where, in its opinion, this is required because of the implementation of the *New Payments Architecture*.
- 4.2** The *operator* of *FPS* may apply to the *Payment Systems Regulator* seeking a date to be specified for the purposes of paragraph 2.1.
- 4.3** [omitted]
- 4.4** [omitted]
- 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
- 4.5a** The *Payment Systems Regulator* may require further material that it considers appropriate to its determination of the application.
- 4.6** The *Payment Systems Regulator* will consider the application provided and all facts it considers relevant at the time.
- 4.7** The *Payment Systems Regulator* may reject an application or specify the date sought in the application, or such other date as it sees fit, and may make the specification of such later date subject to compliance by the *operator* with any conditions set out in its

decision. Such conditions may, in particular, include a requirement that the *operator* undertakes steps in relation to any interim contract for *central infrastructure services* (for example, certain of the steps outlined at paragraph 2.2).

5 Exemption for exceptional circumstances

- 5.1** The *operator* of FPS may apply to the *Payment Systems Regulator* for an exemption from the duty to comply with one or more of the obligations set out in this Specific Direction 3. Such applications must include:
- a. the exceptional circumstances which the *operator* maintains justify the application
 - b. the steps which the *operator* is taking, or proposing to take, to mitigate any risks arising from its non-compliance
 - c. whether, and when, the operator expects to recommence compliance with all of its obligations under this Specific Direction 3.
- 5.2** The *Payment Systems Regulator* may reject an application or approve it in whole, or in part, and may make such approval subject to compliance with any conditions.
- 5.3** Where the *Payment Systems Regulator* has approved an application, the *operator* must comply with its obligations under this Specific Direction 3 before such date as the *Payment Systems Regulator* specifies in the approval of the application.

6 Application

- 6.1** This specific direction applies to the *operator* of FPS.
- 6.2** The *operator* of FPS may, where appropriate, fulfil its obligations set out in this Specific Direction 3 jointly with one or more of the *operator(s)* of *Bacs* and *Cheque and Credit*. The *operator* of FPS remains individually subject to the obligations set out in this specific direction regardless of any joint compliance.

7 Commencement

- 7.1** This specific direction comes into force on 20 June 2017.
- 7.2** This specific direction shall continue in force until such time as it is varied or revoked by the *Payment Systems Regulator*.

8 Citation

- 8.1 This specific direction may be cited as Specific Direction 3 (Procurement: FPS).

9 Interpretation

- 9.1 General Provisions GP2 and GP3 are incorporated into this specific direction and are to be read as a direction under section 54 of the Act for the purposes of this specific direction.
- 9.2 The headings and titles used in this specific direction are for convenience and have no legal effect.
- 9.3 The Interpretation Act 1978 applies to this specific direction as if it were an Act of Parliament except where words and expressions are expressly defined.
- 9.4 References to any statute or statutory provisions shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 9.5 In this specific direction:

Act	Means the Financial Services (Banking Reform) Act 2013
Bacs	Means the <i>Bacs regulated payment system</i> designated by HM Treasury under section 43 of the Act in March 2015
central infrastructure	Means the whole, or any part of, a package of systems and services, comprising hardware and software, provided under contract to an <i>operator</i> for the purposes of operating <i>FPS</i> (or a system that forms part of the <i>New Payments Architecture</i>), including the processing of funds transfers
central infrastructure contract	Means a contract between an <i>operator</i> and another person for the provision of <i>central infrastructure</i>
central infrastructure provider	Means an infrastructure provider when providing <i>central infrastructure</i>
Cheque and Credit	Means the <i>Cheque and Credit regulated payment system</i> designated by HM Treasury under section 43 of the Act in March 2015
competitive tender	Means a process by which an <i>operator</i> invites and evaluates bids for the provision of <i>central infrastructure</i>

Consolidated operator	The person created in furtherance of the <i>Forum</i> 's proposal to consolidate the person who is responsible, at 20 June 2017, for fulfilling the role of <i>operator</i> of <i>FPS</i> with the persons responsible for fulfilling the role of <i>operator</i> for one or more other <i>regulated payment systems</i>
existing central infrastructure contract	Means the agreements between FPSL and VocaLink of 10 February 2014 relating to the provision of Managed Services for a Faster Payments Service, as amended from time to time
existing messaging standard	Means FPS's implementation of the ISO 8583 messaging standard, plus its use of Standard 18 for Direct Corporate Access submissions
Faster Payments Scheme (FPS)	Means the Faster Payments Scheme <i>regulated payment system</i> designated by HM Treasury under section 43 of the Act in March 2015
Forum	The Payments Strategy <i>Forum</i>
infrastructure provider	Has the meaning given by section 42(4) of the Act
ISO 20022 messaging standard	An international financial messaging standard developed to facilitate electronic data interchange between financial institutions, and which supports interoperability between all parties in the payments process
Minimum scope	the services and system functionality needed to process <i>single push payments</i>
New Payments Architecture	Means the proposed new architecture for certain <i>regulated payment systems</i> , known as the simplified payments platform, as set out in the <i>Forum</i> 's November 2016 document, 'A Payments Strategy for the 21st Century'
operator	Has the meaning given by section 42(3) of the Act
payment system	Has the meaning given by section 41 of the Act
Payment Systems Regulator	Means the body corporate established under Part 5 of the Act
potential provider	Means a person who is a <i>central infrastructure</i> provider or who, in future, has the potential to become a <i>central infrastructure</i> provider
procurement	Means the process of entering into a contract for the acquisition, by an <i>operator</i> , of <i>central infrastructure</i> from another person chosen by that <i>operator</i>

regulated payment system	Means a payment system designated by HM Treasury under section 43 of the Act in March 2015
Single push payment	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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