

DRAFT Specific Direction [X]
requiring the continuation of
appropriate policies, measures
and reporting obligations
regarding protected ATMs (LINK)

Specific Direction:
Free to Use ATMs 2022: LINK.

[January 2022]

We welcome your views on this draft direction. If you would like to provide comments, please send these to us by **5pm on 16 November 2021**.

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

Access to Cash project team
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will take account of your comments when finalising the direction.

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

We will make all non-confidential responses to this consultation available for public inspection. 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 draft direction from our website:

<https://psr.org.uk/publications/consultations/cp21-9-draft-direction-atms>

We take our data protection responsibilities seriously and will process any personal data that you provide to us in accordance with the Data Protection Act 2018, the General Data Protection Regulation and our PSR Data Privacy Policy. For more information on how and why we process your personal data, and your rights in respect of the personal data that you provide to us, please see our website privacy policy, available here: <https://www.psr.org.uk/privacy-notice>

Specific Direction: Free to Use ATMs 2022: LINK.

1 Recitals

Whereas:

- 1.1 LINK is a network of Card Issuers and ATM providers that allows cardholders to use their cards to withdraw cash at any ATM connected to the LINK network where the ATM provider is not the same institution as the cardholder's issuing bank.
- 1.2 ATMs connected to the LINK network are operated by ATM providers. ATM providers may be card-issuing payment service providers, or independent ATM deployers.
- 1.3 In October 2018, the PSR exercised its powers under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act) to make a specific direction (*Specific Direction: Protected ATMs 2018: LINK*) requiring LINK to adopt appropriate policies and measures and reporting obligations regarding ATMs with 'protected' status (Specific Direction 8).
- 1.4 The purpose of Specific Direction 8 was to support and underpin a commitment made by the operator of LINK to the PSR during discussions in early February 2018. The operator of LINK committed to monitor the impact of the LINK's Board decision to introduce a phased reduction in the LINK's scheme interchange fees.¹
- 1.5 Specific Direction 8 ensured that the operator of LINK could maintain the broad geographic coverage of the free-to-use (FTU) ATM Network in the UK and meet service-user needs, and had the resources to do so, by:
 - a. requiring it to provide clarity on the scope its commitment
 - b. requiring it to provide clarity on its procedures, processes, policies and measures
 - c. setting certain minimum requirements for it to comply with, and
 - d. requiring it to secure such expertise, resources, equipment and/or software that may be required from time to time to enable it to fulfil its commitment

¹ As set out in LINK's Final Decision and Impact Assessment (31 January 2018), Page 2, second paragraph, first bullet point and page 5, section entitled 'Reduction of Interchange'.

- 1.6** Specific Direction 8 came into force on 19 October 2018. It was to continue in force until 2 January 2022 unless earlier varied or revoked by the PSR. The direction was subject to review by the PSR. The first and second annual reviews were published on 10 March 2021² and 1 July 2021³ respectively, the second review concluded that Specific Direction 8 should remain in place until it expires in January 2022.⁴
- 1.7** The PSR considers it necessary to give a new direction to continue to support the operator of LINK in ensuring that it can meet the objective of continuing to maintain a broad geographic coverage of the FTU ATM Network in the UK and meet service user needs by having in place and maintaining appropriate and effective policies, measures and reporting obligations.

2 Powers exercised and purpose

- 2.1** The PSR makes this specific direction in accordance with section 54(2)(a) of the Act. In accordance with section 54(3)(c) of the Act, this specific direction applies to the operator of LINK.
- 2.2** The PSR has had regard in particular to the following provisions of the Act as appropriate:
- a. section 49 to 53 (General duties of the Regulator)
 - b. section 62(2)(a) (Duty to consider exercise of powers under the Competition Act 1998)
- 2.3** The purpose of this specific direction is to require the operator of LINK to:
- 1. continue to have place and maintain appropriate measures and policies to meet the objective of ensuring it can continue to maintain a broad geographic spread of the FTU ATM LINK Network in the UK and meet service user needs.
 - 2. monitor and report to the PSR in accordance with Part 8.

² <https://www.psr.org.uk/publications/policy-statements/first-annual-review-of-specific-direction-8-2020/>

³ <https://www.psr.org.uk/publications/policy-statements/second-annual-review-of-specific-direction-8-2021/>

⁴ https://www.psr.org.uk/media/ewbm4tqs/sd8-second-review_june_2021_v3.pdf

Direction

Now the PSR gives the following specific direction to the operator of LINK:

3 Key definitions

- 3.1 ATM Replacement Procedure** means any approach or commercial arrangement that the operator of LINK uses to keep a Lost ATM open, to reopen a Lost ATM, or incentivise or otherwise ensure the opening of a replacement FTU ATM within the Defined Radius of the Lost ATM.
- 3.2 Defined Radius** means a distance set by the operator of LINK measured from the location of an FTU ATM, currently 1km as at the date this direction came into force.
- 3.3 Direct Commissioning** means the process that the operator of LINK applies to select an appropriate organisation (including through a tendering process) to assume responsibility for replacing a Lost ATM and that forms part of the ATM Replacement Procedure.
- 3.4 Filter** means:
1. the process or processes the operator of LINK applies to decide whether it should incentivise or otherwise ensure the maintenance, reopening or replacement of a Lost ATM, and
 2. any other process or processes which the operator of LINK subsequently applies from time to time, pursuant to Part 5 and Part 6, which form part of its policies and measures
- 3.5 Lost ATM** means any Protected ATM, subject to not having been carved out by application of the Filter, that fulfils one of the following criteria:
1. the Protected ATM has ceased to operate (other than where LINK has obtained confirmation that this is on a temporary basis), or
 2. the Protected ATM switches to charging for withdrawal of cash on a part-time or a full-time basis, or
 3. the Protected ATM is known to the operator of LINK, having made reasonable enquiries, as being scheduled to close within the next 12 weeks
- 3.6 Policies and measures** mean the policies and measures referred to in Parts 5 and 6.

3.7 **Protected ATM** means:

1. an FTU ATM which was in existence in the UK, and connected to the LINK Network as at 2 January 2022 which has no other FTU ATM within the Defined Radius, and
2. any other FTU ATM which existed as at 2 January 2022 and which the operator of LINK subsequently identifies as a Protected ATM pursuant to the policies and measures in place pursuant to Part 5 and Part 6

4 **Timeline for the updating and implementation of policies and measures**

4.1 The operator of LINK must, except where the PSR notifies the operator of LINK in writing:

1. by 3 March 2022, provide the PSR with a draft version of its updated policies and measures to reflect the matters set out at Part 5 and Part 6 of this Specific Direction.
2. by 3 April 2022, provide the PSR with a final version of the updated policies and measures at Part 5 and Part 6 of this Specific Direction.
3. by 30 April 2022, implement the updated policies and measures at Part 5 and Part 6 of this Specific Direction.

5 **Requirement to have in place and maintain appropriate policies and measures**

5.1 The operator of LINK must have in place and maintain appropriate, effective and well-defined policies and measures in relation to the objective of ensuring that they can continue to maintain the broad geographic spread of the FTU ATM LINK Network and meet service user needs. These policies and measures must address the following:

1. how the operator of LINK will use and apply financial incentives, including the application of an interchange premium for protected ATMs, the protected ATM premium and the low volume premium, to enable the continued operation of Protected ATMs
2. provide an outline of how the Defined Radius will be set and how the Defined Radius will be applied flexibly where appropriate to reflect actual travel conditions on the ground rather than a rigid 'as the crow flies' approach
3. set out what the Filters are and how the operator of LINK will apply its Filters

4. set out the criteria the operator of LINK intends to use to determine the circumstances in which alternative cash access, including but not limited to the Post Office , will be considered as an adequate substitute for a Lost ATM

5.2 Save as otherwise notified by the PSR and/or for reasons of commercial confidentiality or sensitivity, the policies and measures must be published in full on the LINK website.

6 The ATM Replacement Procedure

6.1 The operator of LINK must have in place and maintain appropriate, effective and well -defined policies and processes as part of its ATM Replacement Procedure.

6.2 In respect of any Lost ATM, the operator of LINK must complete the overall ATM Replacement Procedure process including any mitigation activities, within six months of any Protected ATM being identified as a Lost ATM.

6.3 Where LINK determines that alternative cash access is an adequate substitute for a Lost ATM, it must keep under review that this alternative cash access continues to meet the criteria in 5.1(4).

7 Variations

7.1 This Part applies where the operator of LINK proposes to vary, revoke or replace any of its procedures, policies, processes and measures set out at Part 5 and/or Part 6; and/or introduce any new procedures, policies, processes and measures in relation to the objective of ensuring that it can continue to maintain the broad geographic spread of the FTU ATM LINK Network and meet service user needs. Before effecting any such variation, the operator of LINK must:

1. give the PSR a minimum of one-month notice informing the PSR of its intention
2. provide with such notice, an explanation of its reasoning for doing so and its assessment of the impact of the proposed change
3. in relation to a proposal to vary the Defined Radius, the explanation required by paragraph 7.1.2 should include an explanation of how the proposed Defined Radius would continue to meet the objective of ensuring that the operator of LINK can continue to maintain the broad geographic spread of the FTU ATM LINK Network in the UK and meet service user needs

7.2 The operator of LINK shall not bring any changes to which this Part applies into effect if the PSR raises objections within one month of the date of notice being given to it.

8 Monitoring and reporting requirements

- 8.1** The operator of LINK must monitor and report to the PSR on a monthly basis on the following, save as otherwise notified by the PSR:
1. Any changes to the Protected ATMs and Lost ATMs. The monthly report should include at a minimum:
 - a. The number and location of any ATMs that were not protected on 2 January 2022, or the date of the last report to the PSR, whichever is the later, and which have subsequently become Protected ATMs.
 - b. In respect of any Protected ATM that may become a Lost ATM, the number and location of such ATMs and an explanation of whether the operator of LINK intends to apply, or has applied a Filter to the Protected ATM, and if so, reasons should be given to explain which Filter has been applied and why it has been applied.
 - c. In respect of any Lost ATMs, the following information:
 1. the number and location of such ATMs
 2. the month in which the Lost ATM stopped transacting, or is expected to stop transacting
 3. average monthly withdrawals
 4. the distance from the nearest FTU ATM with public access
 2. For each Lost ATM to which the ATM Replacement Procedure is applied, information on:
 - a. what actions have been taken by the operator of LINK in connection with the ATM Replacement Procedure
 - b. the date at which a Lost ATM is replaced
 - c. the current outcome of the ATM Replacement Procedure where the Protected ATM became a Lost ATM and has not been replaced
 - d. details on the progress of the Direct Commissioning process used to replace Lost ATMs including, number of Protected ATMs that have become Lost ATMs and are subject to Direct Commissioning, location of Lost ATMs and the stage of the process and time taken to complete the Direct Commissioning process
 3. The operator of LINK must provide the PSR on a monthly basis, save as otherwise provided by the PSR, with an explanation of any strategic decisions made by the operator of LINK in relation to its procedures, policies, processes and measures referred to at Part 5 and/or Part 6. This should include the factors taken into

account in reaching its decision on how the decision has been influenced by the operator of LINK's monitoring activity.

4. The operator of LINK must provide the PSR with a report every 12 months which outlines the considerations given to enhancing resilience of the ATM Replacement Procedure, and a timeframe which specifies when these considerations will be implemented.
5. The operator of LINK must provide to the PSR any additional information and documents relating to its monitoring activities and decisions, so that the PSR can understand the operator of LINK's activities in context and verify information if necessary. This may include the operator of LINK's confidential information that cannot be published and copies of unredacted sections of relevant Board Minutes.
6. The operator of LINK must publish such information reported to the PSR pursuant to this Part 8, subject to issues of commercial confidentiality or sensitivity, as the PSR may determine from time to time.

9 Application

- 9.1 This specific direction applies to the operator of LINK.

10 Commencement and duration

- 10.1 This specific direction comes into force on 3 January 2022.

- 10.2 This specific direction must continue in force until 2 January 2025 unless it is varied earlier, or revoked by the PSR.

This specific direction must be subject to review by the PSR after 12 months and (if still in place) after 24 months.

11 Citation

- 11.1 This specific direction may be cited as *Specific Direction [X]: Free to Use ATMs 2022: LINK*.

12 Interpretation

- 12.1 The headings and titles used in this specific direction are for convenience and have no legal effect.

- 12.2** 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.
- 12.3** References to any statute or statutory provisions must be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 12.4** In this specific direction, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.
- 12.5** In this specific direction:
- **Act** means the Financial Services (Banking Reform) Act 2013.
 - **ATM** means an automated teller machine or other unattended terminal capable of dispensing cash and which may be used to enable or facilitate payment, receipt, transfer of money or the transmission of other instructions or enquiries connected with financial services which is connected to the LINK network.
 - **ATM Provider** means a LINK Network member who operates ATMs and through whose system a LINK transaction is introduced into the LINK Network. ATM providers may be card-issuing payment service providers, or may be independent ATM deployers that do not issue cards.
 - **Board** means the Board of Link Scheme Holdings Ltd.
 - **Card Issuer** means each LINK Network member that issues cards that use the LINK network to its members or customers.
 - **FTU ATM** means a free-to-use ATM.
 - **IAD** means an ATM provider that does not issue cards.
 - **LINK** means the regulated payment system designated by the Treasury under section 43 of the Act in March 2015.
 - **LINK Network** means the shared network used for the purposes, among other things, of serving the ATMs of LINK Network members and others, of permitting the customers of LINK Network members to withdraw cash from their accounts mechanically and electronically by means of a cash withdrawal at an ATM operated by a LINK Network member.
 - **LINK transaction** means any transaction carried out at an ATM or as a transaction within the LINK Network.
 - **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** or **PSR** means the body corporate established under Part 5 of the Act.
- **Payment service provider** has the meaning given by section 42 specifically of the Act.
- **Regulated payment system** means a payment system designated by the Treasury under section 43 of the Act.

Made on [DATE]

Chris Hemsley

Managing Director

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