

Consultation paper

Securing Compliance: Proposed Extensions and Exemptions Guidance

Consultation on proposed guidance
when considering extensions or
exemptions from our specific
directions and requirements

May 2024

We welcome your views on this guidance consultation. If you would like to provide comments, please send these to us by **5pm on Monday 3 June 2024**.

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

Compliance Monitoring
Payment Systems Regulator
12 Endeavour Square
London E20 1JN

We will consider your comments when preparing our response to this consultation.

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. We may nonetheless be required to disclose all responses which include information marked as confidential in order to meet legal obligations, in particular if we are asked to disclose a confidential response 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 Information Rights Tribunal.

You can download this consultation paper from our website:

www.psr.org.uk/cp24-6-proposed-extensions-and-exemptions-guidance/

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>

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1 Executive summary

Some of our specific directions and requirements provide for extensions and exemptions. We recognise that there may be circumstances where regulated parties will need to ask us for more time to comply, or to have a requirement waived altogether. The factors we will consider in these circumstances are:

- any negative impact on payment systems users or our strategic goals
 - the policy aims of the specific direction or requirement
 - the burden that complying with the direction or requirement places on the party
 - steps the party has taken to ensure that it will comply with the rules after any extension
 - how the party has acted to mitigate any risks
 - whether complying with our direction or requirement would cause the party to be non-compliant with other regulatory obligations
 - whether the requirements should no longer apply to the regulated party
 - whether the party will stop providing relevant services within a defined period of time
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1.1 Specific directions and requirements are important tools. We use them to require regulated parties to make changes that improve payments for people and businesses across the UK.

1.2 We are consulting on proposed guidance that sets out the factors we will use to decide whether to grant an extension or exemption to parties affected by one of our specific directions or specific requirements. This includes guidance on when to engage with us on finding a solution when such circumstances arise.

1.3 The proposed guidance provides firms with clarity on the limited circumstances in which we may deem an extension or exemption appropriate. We think the bar for granting an extension or exemption should be high. This is because we want as many people as possible to benefit from the actions we take to deliver competition, innovation, and greater benefits to UK payments users.

- We are proposing this guidance to:
- ensure that regulated parties recognise that they must comply with our specific directions and requirements to achieve the desired outcomes for UK payments users
- make stakeholders aware that extensions and exemptions will only be granted in limited circumstances
- explain the criteria we use to decide whether to grant exemptions and extensions
- ensure a consistent approach to all existing and future requests for extensions or exemptions

2 Introduction

- 2.1** Some of our specific directions and requirements allow us to extend the time available to parties to comply, for a defined period of time, or to grant an exemption from some or all of the requirements.
- 2.2** We are consulting on proposed general guidance explaining the factors we will use to decide whether to grant an extension or exemption to a specific direction or requirement. This will include guidance on when and why regulated parties should apply, should relevant circumstances arise preventing timely compliance.
- 2.3** We have already considered such requests in the past, from regulated parties asking for exemptions or extensions in complying with aspects of Specific Directions 2, 3 and 17.
- 2.4** Sections 54 and 55 of the Financial Services (Banking Reform) Act (FSBRA) grant us powers to issue directions and requirements. Section 96 allows us to issue general guidance, keeping in mind our general duties and regulatory principles as expressed in sections 49 and 53. You can find our proposed guidance in Annex 1. It is important that stakeholders see the key factors we are proposing and what information we will expect regulated parties to provide when applying for an extension or for an exemption.
- 2.5** It is important for regulated parties to understand the criteria and factors we consider when determining to grant an exemption or extension.
- 2.6** We welcome feedback from stakeholders, whether they are regulated parties or not. We invite stakeholders to comment on whether our expectations of regulated parties applying for an extension or exemption are sufficient and fair, or whether we should consider other aspects in exceptional circumstances.
- 2.7** Our questions for stakeholders are set out in Section 5.

3 Reasons for publishing the proposed guidance

3.1 We are the economic regulator for the payment systems industry in the UK. FSBRA gives us statutory objectives that require us to:

- ensure that payment systems are operated and developed in a way that considers and promotes the interests of the businesses and consumers that use them
- promote effective competition in the markets for payment systems and services in the interests of service users
- promote the development of and innovation in payment systems, particularly the infrastructure used to operate those systems, in the interests of service users¹

3.2 Our rules, decisions and guidance aim to achieve certain outcomes that benefit UK payments users. They apply to participants in the payment systems we regulate, defined as:

- operators of regulated payment systems
- payment systems providers
- infrastructure providers

3.3 We recognise that there are certain limited circumstances where it may be appropriate to grant a participant an extension or exemption.

3.4 The proposed guidance sets out the basis on which we would consider a formal request for an extension to or an exemption from one of our specific directions or specific requirements. It also explains the information we would require to assess such requests. The guidance only applies to directions and requirements that provide for extensions and exemptions.

3.5 By providing this guidance, we increase transparency and make sure regulated parties understand the factors we will consider when determining whether to grant an extension or exemption.

3.6 We want to make clear that we will only grant extensions or exemptions in limited circumstances. This should reduce the risk of competition being distorted by regulated parties avoiding compliance and justifying their behaviour on the basis of a misunderstanding of our expectations.

3.7 We are also seeking to mitigate coordination issues when more than one regulated entity needs to comply with our directions in order to provide end-to-end service. For example, this could occur in relation to our requirements for Confirmation of Payee, or Authorised Push Payment fraud reimbursements. Clarity around compliance should help ensure that both sending and receiving PSPs can coordinate implementation of our directions or requirements.

1 FSBRA, sections 50 to 52.

3.8 We also want to ensure that we are consistent in our approach to all existing and future requests for extensions and exemptions.

3.9 In its present form, our proposed guidance does not apply to general directions or generally applicable regulatory requirements. It also does not apply to extensions or exemptions in the context of remedies using our powers under the Competition Act, the Enterprise Act, or the Enterprise and Regulatory Reform Act.

4 Deciding to grant an extension or exemption: proposed factors

- 4.1** The proposed guidance will clarify the exceptional circumstances in which an extension or exemption may be appropriate. We do not grant extensions or exemptions in cases where we consider it would jeopardise our statutory objectives under sections 49 to 52 of FSBRA.
- 4.2** The key factors that we would consider when considering a request for an extension or exemption are as follows:
- Whether granting an exemption or extension would adversely impact payment systems users, undermine any of our statutory objectives, undermine the priorities set out in our five-year Strategy, or adversely impact the improvements we seek. 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.
- 4.3** To grant an extension, we would expect regulated parties to demonstrate that 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.
- 4.4** In addition to the factors outlined above, before granting an exemption we would also 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
- 4.5** In the last of these scenarios, we would expect the regulated party to tell us how any risks to our objectives would be mitigated while it continues to operate services. We would likely only grant an exemption where this was for a very limited period of time.
- 4.6** You can find full details of the factors we would and would not take into account in Chapter 2 of the proposed guidance at Annex 1.

5 Next steps and consultation questions

This section sets out the next steps for our proposed guidance, including guidance on who can respond to our consultation, the recommended format for responses, and how and when to submit them.

- 5.1** We are now consulting on the proposed guidance which will be introduced by the draft direction at Annex 1. The deadline for comments on the proposals is 5pm on Monday 3 June 2024.
- 5.2** You can email your comments and responses to **PSRSecuringCompliance@psr.org.uk**. We would be grateful if you could provide your response in a Word document (rather than, or as well as, a PDF).
- 5.3** During our consultation we will engage with stakeholders to obtain as wide a variety of views as possible on our revised directions. We welcome comments from all stakeholders and interested parties, not only entities that we regulate.
- 5.4** Following consultation and our assessment of the responses received, we expect to make final decisions in the summer of 2024. We will aim to publish our finalised, updated version of the guidance at Annex 1 shortly thereafter.
- 5.5** We will make all non-confidential responses to this consultation available for public inspection.

Consultation questions

- 1. Do you have any comments on the draft guidance for considering extensions and exemptions to our specific directions?**
- 2. Do you agree with the key factors we propose for considering extensions?**
- 3. Do you agree with the key factors we propose for considering exemptions?**
- 4. Are there any other factors you think we need to consider that are not covered in the proposed guidance?**

Annex 1:

Extensions to and Exemptions from PSR Specific Directions: DRAFT Guidance

Securing compliance
with our specific
directions and
requirements:

Draft guidance on
extensions and exemptions

May 2024

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1 Introduction

Overview

- 1.1** The Payment Systems Regulator Limited (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 a subsidiary of, but independent from, 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, defined as:
1. operators of regulated payment systems
 2. payment systems 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 that 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, but 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 regulated parties are concerned that they may be non-compliant with their obligations, we expect them to contact us at the earliest available opportunity to engage in a regulatory dialogue.¹ If, as a regulated party, you are in this situation, we would expect any communications to detail how you will mitigate the risk to those who use your service, or to the market as a whole. You should also explain what steps you are taking to ensure compliance and your expected timescale for doing so.

¹ [General Direction 1 \(psr.org.uk\)](#) imposes an obligation on participants and regulated persons to deal with the PSR in an open and cooperative way. This includes notifying us if they become aware of information which 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 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 either to a general direction imposed under section 54 FSBRA or a generally applicable requirement imposed requirement under section 55 FSBRA.

2 Deciding to grant an exemption or extension: key factors

- 2.1** It's 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 only be appropriate to grant extensions or exemptions in limited circumstances, where doing so allows us to ensure the delivery of our objectives.
- 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, undermine the priorities set out in our five-year strategy, or adversely impact the improvements we seek. 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.
- 2.3** We are more likely to grant an exemption or extension when an applicant provides cogent 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 sections that follow, we provide guidance on the factors that are likely to apply specifically to exemptions and to extensions respectively.

3 <https://www.psr.org.uk/publications/psr-strategy-documents/the-psr-strategy/>

4 <https://www.legislation.gov.uk/ukpga/2013/33/part/5/crossheading/general-duties-of-regulator/enacted>

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 also 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 of these scenarios, 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 only grant an exemption 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 in the circumstances.
- 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 possible opportunity.

Guidance on factors specific to extensions

- 2.12** When evaluating whether to grant an extension request, we start from the position that all regulated parties should have taken all appropriate steps to ensure compliance with their obligations. To grant an extension, we expect regulated parties to 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:
- a regulated party has 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 include the following:

- 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 themselves form 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:
<https://www.psr.org.uk/publications/forms/>
- 3.5** Where we have not provided an application form to request an extension or exemption for an individual direction or requirement, regulated parties should do so in writing at the following mailbox: **PSRSecuringCompliance@psr.org.uk**

What will happen once 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.
- 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.
- 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 in good time, especially if they are concerned that 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.
- 3.11** We may publish the non-confidential details of the request and our decision on our website if we think that it would be in the public interest to do so. Before doing this, we would give regulated parties an opportunity to request confidentiality.

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