
Specific Direction 2 on competitive procurement of central infrastructure (Bacs)

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Contents

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1	Whereas	3
	Power exercised and purpose	4
2	Requirement to procure	4
3	Reporting requirement	6
4	Application to the <i>Payment Systems Regulator</i> to extend the date for compliance for transitional arrangement in relation to the <i>New Payments Architecture</i>	6
5	Exemption for exceptional circumstances	7
6	Application of Specific Direction 2	8
7	Commencement	8
8	Citation	8
9	Interpretation	8

1 Whereas:

- 1.1 The *operator of Bacs* has been operating the *Bacs* payment system with the use of *central infrastructure* services provided under the *existing central infrastructure contract*.
- 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 from 1 December 2020, upon 24 months' notice to terminate that contract being given by either party on or after 1 Dec 2018.
- 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 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 December 2020 in light of the implementation of the *New Payments Architecture*, having regard to the expected duration and value of that contract or any other factors related to the transition to the *New Payments Architecture*. The *Payment Systems Regulator* may impose conditions requiring the *operator* to ensure that any contract in place from 1 December 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 Bacs would need to make arrangements to allow all system participants to have migrated, where applicable, 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* contract, which may, where applicable, be a transitional contract in anticipation of the implementation of the *New Payments Architecture* in due course.

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).

- 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 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.

Power 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)
 - b) 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 report³ and remedies decision.⁴
- 1.12** The purpose of this specific direction is to ensure that if the *operator* of Bacs procures any *central infrastructure*, it is procured competitively in accordance with this specific direction.

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

2 Requirement to procure

- 2.1** Subject to section 5, the *operator* of Bacs must take such action as is necessary to ensure that any *central infrastructure* contract in place on or after 2 December 2020, 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.

³ PSR MR15/2.3, *Market review into the ownership and competitiveness of infrastructure provision: final report* (July 2016).

⁴ PSR MR15/2.5, *Market review into the ownership and competitiveness of infrastructure provision: remedies decision* (June 2017).

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 Bacs 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*.

2.4 The *operator* of Bacs 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 Bacs must have regard to the work of the Forum in fulfilling its obligations under this Specific Direction 2, including in particular in relation to:

- a) establishing service-user needs for the payment system, including taking into account the views of service-users expressed in the context of the *Forum's* work
- 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 Bacs
- 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 c)

3 Reporting requirement

3.1 The *operator* of Bacs must report to the *Payment Systems Regulator* on its work under this Specific Direction 2 in accordance with paragraph 3.2. Each report must 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:
 - i) Evidence demonstrating that, and a description of how, the *operator* has taken into account the results of its consultation with service-users.
 - ii) 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.

3.2 Unless otherwise specified by the *Payment Systems Regulator* in writing, the *operator* of Bacs must submit the reports required by paragraph 3.1 to the *Payment Systems Regulator* every six months, starting on 29 September 2017. The *Payment Systems Regulator* may specify that reports be submitted on particular dates, by reference to particular steps of a procurement process, or that reporting dates may be suspended for a period of time.

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 December 2020 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 Bacs may apply to the *Payment Systems Regulator* seeking a date to be specified for the purposes of paragraph 2.1.

4.3 Applications under paragraph 4.2 may be made no earlier than 29 September 2017.

4.4 Applications under paragraph 4.2 may be made no later than 31 May 2018.

4.5 Applications under paragraph 4.2 must include:

- a) why, in the *operator's* view, it would not be efficient to comply with the obligation in time for a competitively procured contract to be operational by 1 December 2020, by reference to the anticipated length of the next *central infrastructure* contract, and supporting evidence;
- b) the steps the *operator* is taking, or proposes to take, in relation to securing the provision of *central infrastructure* absent full compliance with this Specific Direction 2 and the *operator's* assessment of how these steps will achieve an outcome that will promote the interests of service-users; and
- c) when the *operator* expects that it, or another *operator* of Bacs, will comply with all of its obligations under this Specific Direction 2.

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 Bacs 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 2. Such applications must include:

- a) the exceptional circumstances which the *operator* maintains justify the application;
- b) the steps which the *operator* is taking in relation to securing the provision of *central infrastructure* services absent full compliance with this Specific Direction 2; and
- c) whether, and when, the *operator* expects to recommence compliance with all of its obligations under this Specific Direction 2.

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 2 before such date as the *Payment Systems Regulator* specifies in the approval of the application.

6 Application of Specific Direction 2

- 6.1** This specific direction applies to the *operator* of Bacs.
- 6.2** The *operator* of Bacs may, where appropriate, fulfil its obligations set out in this Specific Direction 2 jointly with one or more of the *operator(s)* of FPS and *Cheque and Credit*. The *operator* of Bacs 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 2 (Procurement: Bacs).

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:

<i>Act</i>	Means the Financial Services (Banking Reform) Act 2013
<i>Bacs</i>	Means the Bacs <i>regulated payment system</i> designated by HM Treasury under section 43 of the <i>Act</i> in March 2015
<i>central infrastructure</i>	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 Bacs, including the processing of funds transfers
<i>central infrastructure contract</i>	<i>Means a contract between an operator and another person for the provision of central infrastructure</i>
<i>central infrastructure provider</i>	Means an infrastructure provider when providing <i>central infrastructure</i>
<i>Cheque and Credit</i>	Means the Cheque and Credit <i>regulated payment system</i> designated by HM Treasury under section 43 of the <i>Act</i> in March 2015
<i>competitive tender</i>	Means a process by which an <i>operator</i> invites and evaluates bids for the provision of <i>central infrastructure</i>
<i>Consolidated operator</i>	The person created in furtherance of the <i>Forum's</i> proposal to consolidate the person who is responsible, at 20 June 2017, for fulfilling the role of <i>operator</i> of Bacs with the persons responsible for fulfilling the role of <i>operator</i> for one or more other <i>regulated payment systems</i>
<i>existing central infrastructure contract</i>	Means the agreements between BPSL and Vocalink of 7 November 2014, as amended from time to time
<i>existing messaging standard</i>	Means the Standard 18 <i>messaging standard</i>
<i>Faster Payments Scheme (FPS)</i>	Means the Faster Payments Scheme <i>regulated payment system</i> designated by HM Treasury under section 43 of the <i>Act</i> in March 2015
<i>Forum</i>	<i>The Payments Strategy Forum</i>
<i>infrastructure provider</i>	Has the meaning given by section 42(4) of the <i>Act</i>
<i>ISO 20022 messaging standard</i>	An international financial <i>messaging standard</i> developed to facilitate electronic data interchange between financial institutions, and which supports interoperability between all parties in the payments process
<i>New Payments Architecture</i>	Means the proposed new architecture for certain regulated payment systems, known as the simplified payments platform, as set out in the <i>Forum's</i> November 2016 document, 'A Payments Strategy for the 21st Century'
<i>operator</i>	Has the meaning given by section 42(3) of the <i>Act</i>
<i>payment system</i>	Has the meaning given by section 41 of the <i>Act</i>
<i>Payment Systems Regulator</i>	Means the body corporate established under Part 5 of the <i>Act</i>
<i>potential provider</i>	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
<i>procurement</i>	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>
<i>regulated payment system</i>	Means a payment system designated by HM Treasury under section 43 of the <i>Act</i> in March 2015

