

Specific Direction 2a varying Specific Direction 2 (Procurement: Bacs)

December 2021

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1 Recitals

Whereas:

- 1.1** The Payment Systems Regulator (the PSR) gave Specific Direction 2 under section 54 of the Financial Services (Banking Reform) Act 2013 (the Act). It requires the operator of Bacs to ensure that central infrastructure services for Bacs are competitively procured. It came into force on 20 June 2017.
- 1.2** At the same time, the PSR gave Specific Direction 3 to the operator of the Faster Payments Scheme (FPS), with similar requirements for FPS.
- 1.3** Pay.UK is the current operator of Bacs and FPS. It is also responsible for facilitating the delivery of the New Payments Architecture (NPA). The NPA is intended to replace the current Bacs and FPS infrastructures, in line with the strategy set out in 2016 by the Payments Strategy Forum.¹
- 1.4** To comply with Specific Directions 2 and 3, Pay.UK has been undertaking a competitive procurement for central infrastructure services for the NPA. Its intention was that transactions currently executed using the Bacs and FPS infrastructures would be executed using the NPA infrastructure.
- 1.5** The PSR has concluded that there are unacceptably high risks in Pay.UK's NPA delivery programme. To mitigate these risks, the PSR has decided to change the requirements for the operator's procurement of Bacs central infrastructure services.
- 1.6** This specific direction varies Specific Direction 2 to give effect to the PSR's changes to the requirements on the operator of Bacs.

1 See the Forum's publication [A Payments Strategy for the 21st Century](#)

2 Powers exercised and purpose

- 2.1** The PSR makes this specific direction in accordance with section 54(3)(c) (*Regulatory and competition functions: Directions*) of the Act. In accordance with section 54(3)(c), this specific direction applies in relation to persons of a specified description.
- 2.2** The PSR has had regard in particular to the following provisions of the Act:
- a. sections 49 to 53 (*General duties of Regulator*)
 - b. section 62 (*Duty to consider exercise of powers under Competition Act 1998*)
- 2.3** The PSR gives this direction for the reasons set out in its policy statement CP21/8, *Lowering risks to delivery of the New Payments Architecture* (July 2021)² and its response paper RP21/2, *Lowering risks to NPA delivery: Final changes to Specific Directions 2 and 3* (December 2021)³.
- 2.4** The purpose of this direction is to implement changes to the requirements of Specific Direction 2 (Procurement: Bacs).

2 <https://psr.org.uk/publications/consultations/cp21-8-lowering-risks-to-delivery-of-the-new-payments-architecture/>

3 <https://www.psr.org.uk/publications/policy-statements/rp21-2-mpa-final-changes-to-sd2-sd3/>

Direction

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

3 Variation of SD2

3.1 Specific Direction 2 (Procurement: Bacs)⁴ is varied as follows.

3.2 In paragraph 1.8 of the recitals, for “Section 4”, substitute “Section 5”.

3.3 At the end of the recitals, insert:

“1.8a In April 2018, the *operator* applied under Section 4 for a later date than 2 December 2020 to be specified for the purposes of paragraph 2.1. The *Payment Systems Regulator* subsequently specified 2 December 2023.

1.8b In December 2021 the *Payment Systems Regulator* gave Specific Direction 2a to vary this specific direction. This implemented its decisions on lowering risks to successful delivery of the *New Payments Architecture*⁵. In particular, Specific Direction 2a varies Specific Direction 2 as described in paragraphs 1.8(c) to 1.8(f).

1.8c The deadline for the purposes of paragraph 2.1 of 2 December 2023 was replaced by a power for the *Payment Systems Regulator* to notify the *operator* of a deadline.

1.8d The *operator* cannot extend the *existing central infrastructure contract* for *Bacs* or replace it with a new contract for the supply of central infrastructure services for *Bacs*, or a successor to *Bacs*, unless the *Payment Systems Regulator* has:

- a. notified it of a deadline for the purposes of paragraph 2.1, or
- b. not objected to the *operator* extending the *existing central infrastructure contract* or entering into a new contract

1.8e The *operator* must report to the *Payment Systems Regulator* by 31 March 2023 to set out its plans for considering the future of *Bacs* (and to report subsequently on its work to deliver those plans).

1.8f Section 4 is varied so that the *Payment Systems Regulator* may change a deadline that applies for the purposes of paragraph 2.1 where this is required because of the implementation of the *New Payments Architecture*.

4 See: <https://www.psr.org.uk/publications/general/specific-direction-2/>

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

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.”

3.4 In paragraph 2.1 for “2 December 2020⁶”, substitute “such date as the *Payment Systems Regulator* may notify the *operator* of in writing”.

3.5 After paragraph 2.1, insert:

“**2.1a** The *Payment Systems Regulator* will publish a copy of the notification on its website⁷ within seven days of giving it.”

3.6 In paragraph 2.3, for “set out in, or specified under, paragraph 2.1”, substitute “notified or specified under paragraph 2.1”.

3.7 After paragraph 2.3, insert:

“**2.3a** The *operator* must not *enter into a new central infrastructure contract* unless:

1. the *Payment Systems Regulator* has notified it of the date the contract must be in place by under paragraph 2.1, or specified a later date in accordance with Section 4, and it has complied with the requirements of this section in procuring the contract, or
2. it has given notice of its intention to enter into the contract under the non-objection process (see Section 2A), and the *Payment Systems Regulator* has given notice in writing that it does not object

2.3b The *operator* must not extend the *existing central infrastructure contract* (including by exercising any options to do so in the contract) unless it has given notice of its intention to extend under the non-objection process (see Section 2A), and the *Payment Systems Regulator* has given notice in writing that it does not object.

2.3c The *operator* must comply with any conditions the *Payment Systems Regulator* gives under paragraph 2A.6.

2.3d Paragraphs 2.3(a) to 2.3(c) do not prevent services or system functionality being provided for in a contract as additional functionality where paragraph 2.3(a) of Specific Direction 3 is satisfied in relation to that functionality.”

6 By virtue of an extension given by the PSR under Section 4 of Specific Direction 2, the date applicable immediately before this variation was 2 December 2023.

7 <https://psr.org.uk>

3.8 After Section 2, insert:

“

2A Non-objection process

2A.1 If the *operator* wishes to give notice under paragraph 2.3(a)(2) or 2.3(b), it must do so in writing.

2A.2 In the notice, the *operator* must set out:

- a. the date on which it proposes to enter into the contract or extension (or, if not known, the best estimate available)
- b. the purpose of entering into, or extending, the contract
- c. details of its consultation in relation to the new contract or extension (including on the implications for competition, innovation, service users and the *New Payments Architecture*), including the responses and its consideration of them
- d. a copy of the proposed contract, or, if the contract is being extended, the contract with any proposed changes highlighted
- e. a summary of the terms of the contract or, if the contract is being extended, a summary of the changes to the terms of the contract
- f. information not covered by sub-paragraphs (a) to (e) 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 strength of the *operator's* arguments for its intended course of action (including the risks involved), and how it compares to alternative actions it has considered (or should have considered)

- c. the implications for competition, innovation and service users, including consumers and businesses
- d. the implications for the benefits of the *New Payments Architecture*
- e. the implications for the *operator's* ability to comply with all its obligations under this Specific Direction 2

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, conditions about the services to be included in the contract)."

3.9 For Section 3 (reporting requirement), substitute:

"

3 Reporting requirements

3.1 On or before 31 March 2023, the *operator* must provide the *Payment Systems Regulator* with a report setting out its plans for considering the future of the *Bacs* system (including *Bacs* payment services such as Direct Credits and Direct Debits). The report must include milestones, and the timeline for meeting those milestones.

3.2 The *operator* must report to the *Payment Systems Regulator* on its work to deliver the plans referred to in paragraph 3.1. This reporting requirement applies until the *Payment Systems Regulator* notifies the *operator* in writing that it has ended.

3.3 The report referred to in paragraph 3.2 must include the *operator's* conclusions, as applicable to the stage reached, on the work and any changes to the plans referred to in paragraph 3.1.

3.4 The *operator* must submit the first report required under paragraph 3.2 on or before 31 December 2023. It must submit subsequent reports within nine months of the date the previous report was provided.

3.5 If the *Payment Systems Regulator* has notified the *operator* of *Bacs* of a date, or specified a later date, under paragraph 2.1, the *operator* must report to the *Payment Systems Regulator* on its work under Section 2 of this direction. This reporting requirement applies until the *Payment Systems Regulator* notifies the *operator* in writing that it has ended. As a minimum, each report must include:

- a. a description of the *operator's* progress in relation to the procurement steps in paragraph 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 interested parties
 - 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 paragraph 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.

3.6 The *operator* must submit a report on or before 31 March, 30 June, 30 September and 31 December each year. The *Payment Systems Regulator* will notify the *operator* of the date on which the first report is due when it gives notice of the date under paragraph 2.1.

3.7 In respect of a report required under paragraph 3.1, 3.2 or 3.5, 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
- f. require the *operator* to submit a report by reference to an event (for example, whether a milestone in the plans referred to in paragraph 3.1 has been met) or a report triggered by the event (for example, the completion of a milestone)

It will notify the *operator* of any of these changes in writing.

3.8 A change made under paragraph 3.7(a) or (b) can apply to a specific report, a number of reports, for a period of time or for an indefinite period.

3.9 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.

3.10 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."

3.10 In Section 4 (Application to the *Payment Systems Regulator* to extend the date for compliance for transitional arrangement in relation to the *New Payments Architecture*):

- a. In paragraph 4.1, for "1 December 2020", substitute "a date notified under paragraph 2.1 (or a previously specified date)"
- b. Omit paragraphs 4.3 and 4.4
- c. For paragraph 4.5, substitute:

"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"

d. After paragraph 4.5, insert:

"4.5a The *Payment Systems Regulator* may require further material that it considers appropriate to its determination of the application."

3.11 For paragraph 5.1(b), substitute "the steps which the *operator* is taking, or proposing to take, to mitigate any risks arising from its non-compliance".

3.12 In the table in paragraph 9.5:

- a. in the definition of “central infrastructure”, after “Bacs” insert “(or a system that forms part of the *New Payments Architecture*, to the extent it is intended to be a successor to Bacs)”
- b. after the definition of “Consolidated operator” insert:

“enter into a new central infrastructure contract

Includes amending a central infrastructure contract within the meaning of Specific Direction 3 in order to provide for *central infrastructure* within the meaning of this direction”

4 Application of Specific Direction 2a

4.1 This specific direction applies to the operator of Bacs.

5 Commencement

5.1 This specific direction comes into force on 1 January 2022.

5.2 It continues in force until the PSR revokes it.

6 Citation

6.1 This specific direction may be cited as Specific Direction 2a varying Specific Direction 2 (Procurement: Bacs).

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