

EXPLANATORY MEMORANDUM TO
THE PAYMENT CARD INTERCHANGE FEE REGULATIONS 2015
2015 No. 1911

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision to support the implementation in the United Kingdom of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions ("Interchange Fee Regulation") (OJ L 123, 19.5.2013, p.1). The instrument appoints competent authorities to monitor and enforce compliance with the Interchange Fee Regulation and enables non-compliance to be penalised. It also exercises options available to the United Kingdom on some of the requirements of the Interchange Fee Regulation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Interchange Fee Regulation is directly applicable in the United Kingdom. However, this instrument is made to comply with the obligations of the United Kingdom in Articles 13 to 15 of the Interchange Fee Regulation (designation of competent authorities to ensure enforcement, rules on penalties, and settlement of disputes).
- 4.2 It is also made to exercise two transitional options in the Interchange Fee Regulation. First, the option in Article 1(5) to exempt from the fee caps in Chapter 2 of the Regulation any domestic transactions under a payment card scheme meeting the requirements in Article 1(5), until 9 December 2018. And second, the option in Article 3(3) to allow the interchange fee cap to be calculated on a weighted average basis for domestic debit card transactions until 9 December 2020.
- 4.3 The greater part of the instrument puts in place the regime for the Payment Systems Regulator's lead role in monitoring and enforcing compliance with the Interchange Fee Regulation. This regime is closely aligned with the existing regime overseen by the Payment Systems Regulator under Part 5 of the Financial Services (Banking Reform) Act 2013.

4.4 The Interchange Fee Regulation was given scrutiny clearance by the House of Lords European Union Committee on 17 March 2015 and by the House of Commons European Scrutiny Committee on 3 December 2014.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Harriett Baldwin MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Payment Card Interchange Fee Regulations 2015 are compatible with the Convention rights.”.

7. Policy background

7.1 The Interchange Fee Regulation caps interchange fees for card payments in the EU. Interchange fees are set centrally by card schemes and are paid by the merchant’s bank to the customer’s bank as a percentage of each transaction made by the debit or credit cardholder. The fees are then passed on directly to the merchant by its bank.

7.2 The Interchange Fee Regulation caps interchange fees at 0.3% for credit card transactions and 0.2% for debit card transactions. The Regulation also sets out various business rules which aim to increase the transparency of fees and encourage competition by making it easier for new entrants to join the market, leading to broader availability of payment instruments.

7.3 Although the Interchange Fee Regulation is directly applicable in the United Kingdom, there are some national discretions afforded to Member States in relation to domestic transactions. Following a period of consultation, the Government published its approach to implementation on 8 October 2015, which is as follows:

- Cap interchange fees at 0.3% per transaction for domestic credit card transactions, thereby maintaining the default position set out in the Interchange Fee Regulation.
- Allow card schemes and banks to apply a weighted average interchange fee for domestic debit card transactions of no more than 0.2% of the annual average transaction value of all domestic debit card transactions within the scheme, until 9 December 2020.
- Exempt certain types of card scheme which use third parties to issue cards or acquire payments and have a small market share from the interchange fee cap for domestic transactions, until 9 December 2018.

7.4 The consultation also set out the Government’s suggested approach for monitoring and enforcement of compliance with the Interchange Fee Regulation, including designation of the Payment Systems Regulator as the lead competent authority, roles for the Financial Conduct Authority and trading standards enforcement authorities, and alignment of the design of the regulatory regime with the existing regime overseen by the Payment Systems Regulator. This instrument reflects that approach.

Consolidation

- 7.5 This instrument makes only minor amendments to other legislation and no consolidation is planned.

8. Consultation outcome

- 8.1 HM Treasury published a consultation document on 27 July 2015. The consultation ran for 5 weeks and received 38 responses from banks, merchant acquirers, business groups and individual retailers, card schemes and consumers. HM Treasury considered that allowing 5 weeks for consultation responses was sufficient given that key stakeholders were aware of the requirements of the Interchange Fee Regulation and that industry required a policy direction from the Government ahead of the 9 December deadline for the fee caps coming into effect, so that necessary changes to their systems could be made in time.
- 8.2 The vast majority of respondents agreed with the Government's position on setting rates for domestic credit card transactions and on the regulatory regime. There was mixed support for the Government's proposal on rates for domestic debit card transactions. Most payment industry players, such as banks and card schemes, showed support for this approach. Given the short time before the fee caps in the Interchange Fee Regulation would come into effect on 9 December 2015, most stakeholders also stated that this was a pragmatic solution to minimise disruption. This is because the weighted average approach will allow the status quo to be maintained for the calculation of interchange fees for the vast majority of domestic debit card transactions.
- 8.3 Other businesses, particularly retailers, stated that they would like to see a lower interchange fee cap for domestic debit card transactions. The Payment Systems Regulator launched a programme of work in April 2015, part of which looks at the impact of the Interchange Fee Regulation, as well as other trends and issues within the card payments sector. The Payment Systems Regulator will report in April next year and the Government may reconsider its position on the interchange fee rates at that point.
- 8.4 Most respondents either agreed with, or did not comment on, the Government's proposal to exercise the time-limited exemption from interchange fee caps for domestic transactions under certain types of card schemes. Card schemes which will not be able to benefit from this exemption maintained their opposition to this approach, arguing for a level playing field. It is important to note that only the smallest players will be able to benefit from the exemption. If a card scheme benefiting from the exemption gains a market share greater than 3%, it will be subject to the same fee caps as the larger schemes.

9. Guidance

- 9.1 This instrument gives the Payment Systems Regulator power to publish guidance in relation to the Interchange Fee Regulation, and HM Treasury expects the Payment Systems Regulator to publish such guidance on its approach to enforcing the Interchange Fee Regulation in December.

10. Impact

- 10.1 Issuing banks, which obtain income from interchange fees, will see a reduction in revenue as a result of the caps on interchange fees. However, given that this will

directly translate to savings for other businesses, the net cost to businesses as a whole is £0.

- 10.2 Any business, charity or voluntary body that accepts card payments should benefit from the Interchange Fee Regulation, because the capping of interchange fees is expected to save UK businesses (including charities and voluntary bodies) £700 million each year. The public sector will also benefit from these savings, because it accepts card payments, for example, for tax collection. An Impact Assessment is submitted with this Explanatory Memorandum and is published alongside the memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The main provisions of the Interchange Fee Regulation do not apply to activities that are undertaken by small businesses. However, there is a minor provision which requires merchants (of any size) to display clearly which cards they accept (for example, in a shop window or online) if they do not accept all cards under a scheme.
- 11.2 Given that the Interchange Fee Regulation is directly applicable, HM Treasury was not required to undertake a thorough Small and Micro Business Assessment in the Impact Assessment. However, the Impact Assessment did note that we do not anticipate that this minor provision will be burdensome for businesses as many merchants already display such information at the point of sale.

12. Monitoring & review

- 12.1 This instrument includes a requirement for HM Treasury to conduct a review at intervals of no more than 5 years. Furthermore, there is a review clause in the Interchange Fee Regulation which requires the European Commission to conduct a review by 2019.

13. Contact

- 13.1 Anna Firstbrook at Her Majesty's Treasury telephone: 020 7270 6979 or email: anna.firstbrook@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.