

SCHEDULE 8

Amendments to legislation

PART 3

Amendments to other secondary legislation

Consumer Rights (Payment Surcharges) Regulations 2012

12.—(1) The Consumer Rights (Payment Surcharges) Regulations 2012⁽¹⁾ are amended as follows.

(2) In regulation 1 (citation and commencement)—

(a) in paragraph (2) for “These Regulations apply” substitute “Regulation 4 (fees a trader must not charge a consumer) applies”;

(b) after paragraph (2) insert—

“(3) Regulation 6A applies in relation to contracts entered into after the date on which the Payment Services Regulations 2017 were made.”.

(3) In regulation 3 (other definitions) after the definition of “goods” insert—

““payee”, “payer”, “payment instrument”, “payment service” and “payment service provider” have the meanings given in regulation 2(1) of the Payment Services Regulations 2017;”.

(4) For the heading of regulation 4 (excessive charges prohibited) substitute “Fees a trader must not charge a consumer”.

(5) In the heading of regulation 5 (contracts where prohibition applies) for “prohibition” substitute “regulation 4”.

(6) After regulation 6 (temporary exemption for micro-businesses and new businesses) insert—

“Fees any payee must not charge any payer

6A.—(1) A payee must not charge a payer any fee in respect of payment by means of—

(a) a payment instrument which—

(i) is a card-based payment instrument as defined in Article 2(20) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions⁽²⁾; and

(ii) is not a commercial card as defined in Article 2(6) of that Regulation; or

(b) a payment instrument which—

(i) is not a card-based payment instrument as defined in Article 2(20) of that Regulation; and

(ii) would not fall within the definition of commercial card at Article 2(6) of that Regulation if, in that definition, the reference to any card-based payment instrument were to any payment instrument and the reference to such cards were to such payment instruments; or

(1) [S.I. 2012/3110](#), amended by [S.I. 2013/761](#) and [3134](#) and [2014/549](#).

(2) [OJ L 123, 19.5.2015, p.1.](#)

Status: This is the original version (as it was originally made).

(c) a payment service to which Regulation (EU) 260/2012 of the European Parliament and of the Council of 14th March 2012 establishing technical and business requirements for credit transfers and direct debits in euro⁽³⁾ applies.

(2) A payee receiving a payment by means of a payment instrument must not charge the payer, in respect of such payment, a fee which exceeds the costs borne by the payee for the use of that specific payment instrument.

Application of regulation 6A

6B.—(1) Regulation 6A applies only if the payment service provider of the payer or the payment service provider of the payee is located in an EEA state.

(2) Where the payment service providers of both the payee and the payer are located in an EEA state, regulation 6A(1) and (2) apply.

(3) Where the payment service provider of either the payer or the payee, but not both, is located in an EEA state, regulation 6A(2) applies but regulation 6A(1) does not apply.”

(7) In regulations 7(1) and (4) (complaints), 8(1) and (2) (orders to secure compliance) and 9(a) (notification of undertakings and orders to the CMA) after “regulation 4” insert “or 6A”.

(8) In regulation 10 (consumer’s right of redress)—

- (a) in the heading for “Consumer’s right” substitute “Right”;
- (b) after “regulation 4” insert “or any payee charges a fee in contravention of regulation 6A”;
- (c) in paragraph (a)—
 - (i) for “consumer to pay” substitute “payment of”;
 - (ii) for “of the excess charged” substitute “that the charging of the fee contravenes regulation 4 or 6A”;
- (d) in paragraph (b) for “excess to be repaid to the consumer” substitute “fee to be repaid to the extent that the charging of the fee contravenes regulation 4 or 6A”.

(3) OJ L 94, 30.3.2012, p.22.