

The application of the Interchange Fee Regulation in the UK: Phase 1



We are asking for comments on this consultation paper by 5.00pm on Friday 29 January 2016.

You can send your comments and responses to our consultation questions by using our online response form or by emailing us at cards@psr.org.uk

If you email us, we would be grateful if you could provide your response in a Word document (rather than, or in addition to, providing your response as a PDF).

You may respond in writing to the address below (although we ask for respondents to provide their responses electronically wherever possible).

Payment Systems Regulator
IFR draft Guidance consultation response team
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London E14 5HS

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 nondisclosure. Stakeholders who wish to claim commercial confidentiality over specific items in their response should identify those specific items which they 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 in handling such a request. Any decision we make not to disclose a response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website: <http://www.psr.org.uk>

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The IFR in the UK

- We will be the main competent authority for monitoring and enforcing the IFR in the UK. The Treasury has also assigned roles to other bodies, including the FCA.
- We cannot give definitive interpretations of what the IFR means, but will consult and decide on how we will monitor and enforce compliance with its provisions.
- This consultation paper and the accompanying draft Guidance explain how we will monitor compliance with caps on interchange fees or equivalent issuer compensation (Articles 3, 4 and 5), and business rules provisions already or soon to be in force (Articles 6, 11 and 12).
- We welcome responses to our consultation question, which we will review and consider when we finalise our approach.

Purpose of this consultation

- 1.1 On 29 April 2015, the European Parliament and the Council of the European Union adopted the Interchange Fee Regulation (IFR), which was published in the Official Journal of the European Union on 19 May 2015.¹
- 1.2 The IFR will bring major changes to the way card payment systems operate in Europe. It introduces caps on the interchange fees on debit and credit card transactions where both the issuer and acquirer are located in the EEA. It also sets out a number of business rule provisions that will require affected parties to amend their business practices (unless their current practice already complies with the provisions).
- 1.3 The IFR requires each Member State to appoint one or more competent authorities that will be empowered to enforce the Regulation. HM Treasury ('the Treasury') has decided that the PSR will be the main competent authority in the UK.²
- 1.4 With this Consultation Paper we are seeking stakeholders' views on our approach to monitoring compliance with the IFR provisions which are already in effect or will be by the end of 2015. The accompanying draft Guidance sets out our approach.
- 1.5 This is Phase 1 of our consultation. We have decided to consult in two phases to make the process more manageable for respondents and so we can describe our approach to the aspects of the IFR that come into force on 9 December 2015 as soon as possible. We will conduct Phase 2 of our

¹ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.123.01.0001.01.ENG

² The Statutory Instrument that will give the PSR its powers was published on 17 November. It is available at www.legislation.gov.uk/ukSI/2015/1911/contents/made.

consultation in due course; this will cover our approach to the remaining IFR provisions, which come into effect on 9 June 2016.

- 1.6 We welcome responses to our consultation question, which we will review and consider when we finalise our approach.

Application of the IFR in the UK

- 1.7 The IFR imposes requirements directly on payment card schemes, issuing and acquiring payment service providers (PSPs), processing entities, other technical service providers and, in limited circumstances, merchants. We expect these parties to read, interpret and comply with the provisions of the IFR. If they do not comply they will be at risk of private legal action by affected parties or deprived beneficiaries, or possible enforcement action by the PSR or other competent authorities.
- 1.8 The IFR is a piece of European law that is directly applicable in the UK. The interpretation of what the IFR requires and how parties comply with it are ultimately questions of European law for the national and EU courts. We cannot provide definitive interpretations – we can only set out our approach when acting as the competent authority in the UK. This may change over time – for example, if court judgments clarify the interpretation of the IFR.

The PSR's role in respect of the IFR

- 1.9 The Treasury is responsible for designating one or more competent authorities under the IFR. In the Statutory Instrument published on 17 November 2015,³ the Treasury confirmed the Government's decision to designate the PSR as the overarching authority that is empowered to supervise and enforce compliance with the IFR.
- 1.10 The Treasury also assigned a role to the Financial Conduct Authority (FCA), where certain provisions of the IFR overlap with the FCA's role as supervisor under the Payment Services Regulations 2009.⁴ We have consulted the FCA in developing Chapters 5 and 6 of the draft Guidance, in connection with Articles 11 and 12 of the IFR.
- 1.11 The IFR should be read alongside, and interpreted with, Article 62(4) of the second Payment Services Directive (PSD2), adopted by the Council of the European Union on 16 November 2015.⁵ The legislative proposals for PSD2 were published at the same time as the European Commission adopted proposals for the IFR. Once transposed into national law, PSD2 will ban merchants from surcharging consumers for card-based payments which are covered by the interchange fee caps. The Commission considered that surcharges were no longer justified in such cases, because the cost of accepting the cards will be lower for merchants. The IFR and PSD2 changes are intended by the European institutions to form part of a legislative whole, which they think will enhance consumer protection, lower prices and fees, and help develop the internal market for payment services.

Draft Guidance

- 1.12 In general, the IFR does not specify how competent authorities should meet their responsibilities.

³ www.legislation.gov.uk/uksi/2015/1911/contents/made.

⁴ www.legislation.gov.uk/uksi/2009/209/contents/made

⁵ <http://data.consilium.europa.eu/doc/document/PE-35-2015-INIT/en/pdf>

- 1.13 The draft Guidance published alongside this consultation paper explains the PSR's approach to monitoring and enforcing the IFR provisions that will be in force by 9 December 2015. This will include:
- gathering initial compliance reports from relevant parties
 - seeking data demonstrating compliance with the interchange fee caps
 - investigating complaints about non-compliance with the IFR
- 1.14 The draft Guidance also describes the PSR's Powers and Procedures as competent authority for the IFR (Chapter 7 of draft Guidance) and our approach to applying Penalties for IFR non-compliance (Chapter 8 of draft Guidance). These chapters build on existing Guidance developed by the PSR in connection with its functions under the Financial Services (Banking Reform) Act 2013 (FSBRA).⁶ A version of Chapters 7 and 8 showing how our existing guidance has been developed for IFR purposes is available on request.
- 1.15 The draft Guidance will be of interest to payment card schemes and participants, and those who use the services provided by the schemes.

Question

Q1: Do you have any comments on the draft Guidance?

Next steps

- 1.16 The next steps for the PSR will be to:
- confirm the market share of three-party schemes operating with licensee issuers and/or acquirers (and those that issue cards with a co-branding partner or through an agent) based on data gathered from card schemes;
 - gather information for the purpose of monitoring compliance with the IFR.
- 1.17 These are discussed in turn.

Data to support the market share calculation

- 1.18 As explained in the draft Guidance, the UK Government has decided to grant a time-limited exemption from domestic interchange fee caps to three-party schemes which operate with licensee issuers and/or acquirers or issue cards with a co-branding partner or through an agent. The exemption will end by 9 December 2018 at the latest.
- 1.19 To qualify for the exemption, the value of a scheme's annual domestic transactions must be less than 3% of all UK domestic card-based payment transactions.
- 1.20 The Treasury has asked the PSR to conduct an annual calculation of the market share of relevant schemes. We require information on the total value of UK domestic card-based payment transactions completed under each card scheme that operates in the UK.

⁶ Our FSBRA Powers and Procedures Guidance is available at www.psr.org.uk/powers-and-procedures-guidance. Our existing Penalties guidance is available at <https://www.psr.org.uk/psr-penalties-guidance>.

- 1.21 We will require schemes to provide us with data to support the annual market share calculation. The first information request for this data was sent on 19 November 2015.⁷ A further request will be sent in early 2016.
- 1.22 We recognise that there may, at present, be missing data relating to ‘on-us’ transactions and transactions processed by third parties. To overcome this problem we propose to require schemes to gather data from acquirers and third-party processors. This will enable schemes to provide us with a complete picture of its UK domestic transactions.
- 1.23 We consider that this approach minimises the total regulatory burden as data will need to be collected from only a small number of parties.

Information to support our monitoring of compliance with the IFR

- 1.24 We will also require certain stakeholders to submit data and information to the PSR as part of our approach to monitoring compliance with the IFR. The first requests for this information will be sent shortly after 9 December 2015.
- 1.25 As explained in Chapter 6 of the draft Guidance we will gather initial compliance reports from relevant parties in respect of all IFR Articles that will be in force by 9 December 2015. These reports may then be used as the basis of compliance-focused discussions between the PSR and the party providing the report. The reports on compliance with Articles 11 and 12 may be shared with the FCA.
- 1.26 To enable us to monitor compliance with the interchange fee caps we will ask relevant parties to provide supporting data at least once per year. We may also issue informal or formal (compulsory) information or data requests as appropriate.
- 1.27 In respect of the weighted average caps for domestic debit card transactions, we will require relevant parties to provide any information necessary to verify the correct application of the weighted average approach.

⁷ This request is available at www.psr.org.uk/psr-publications/news-announcements/IFR-information-request-Nov-2015

Annex 1

Glossary

This table includes the glossary and abbreviations used for the purposes of this consultation paper. Where a term is defined in the IFR we record that definition here.

Term or acronym	Description
acquirer (IFR definition)	A payment service provider contracting with a payee to accept and process card-based payment transactions, which result in a transfer of funds to the payee.
FCA	Financial Conduct Authority.
four-party payment card scheme (IFR definition)	A payment card scheme in which card-based payment transactions are made from the payment account of a payer to the payment account of a payee through the intermediation of the scheme, an issuer (on the payer's side) and an acquirer (on the payee's side).
FSBRA	Financial Services (Banking Reform) Act 2013.
IFR (Interchange Fee Regulation)	Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, published in the Official Journal of the EU on 19 May 2015.
interchange fee (IFR definition)	A fee paid for each transaction directly or indirectly (i.e. through a third party) between the issuer and the acquirer involved in a card-based payment transaction. The net compensation or other agreed remuneration is considered to be part of the interchange fee.
issuer (IFR definition)	A payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer's card-based payment transactions.
merchant	In a card payment system context, a merchant is the retailer or service provider that accepts card-based payments from cardholders through the services of an acquirer.
merchant service charge (IFR definition)	A fee paid by the payee to the acquirer in relation to card-based payment transactions.
participant (in a payment system)	This includes payment system operators, payment services providers and infrastructure providers.

Term or acronym	Description
payment card (IFR definition)	A category of payment instrument that enables the payer to initiate a debit or credit card transaction.
PSD (Payment Services Directive)	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, published on 13 November 2007 published in the Official Journal of the EU on 5 December 2007.
PSD2	Revised Directive on Payment Services (PSD2).
PSP (Payment Services Provider)	A PSP, in relation to a payment system, means any person who provides services to persons who are not participants in the system to enable the transfer of funds using the payment system.
PSR (Payment Systems Regulator)	The Payment Systems Regulator Limited, the body corporate established by the FCA under section 40(1) of FSBRA.
three-party payment card scheme (IFR definition)	A payment card scheme in which the scheme itself provides acquiring and issuing services and card-based payment transactions are made from the payment account of a payer to the payment account of a payee within the scheme. When a three-party payment card scheme licenses other payment service providers for the issuance of card-based payment instruments or the acquiring of card-based payment transactions, or both, or issues card-based payment instruments with a co-branding partner or through an agent, it is considered to be a four-party payment card scheme.
the Treasury	Her Majesty's Treasury.

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