

Consultation paper

CP16/3

The application of the Interchange Fee Regulation in the UK: Phase 2



We are asking for comments on this consultation paper by 5.00pm on Friday 8 July 2016.

You can send your comments and responses to our consultation questions 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).

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IFR draft guidance consultation response team
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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 want 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: www.psr.org.uk

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1.

The IFR in the UK

- We are the main competent authority for monitoring and enforcing the Interchange Fee Regulation (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.
- We have already issued guidance covering the IFR provisions which were in force by 9 December 2015 (Phase 1)
- This consultation paper contains draft guidance explaining how we will monitor compliance with the IFR business rules provisions coming into force on 9 June 2016 (Articles 7, 8, 9 and 10).
- We welcome responses to our consultation question, which we will review and consider when we finalise our approach.

The 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 caps the interchange fees on debit and credit card transactions where both the issuer and acquirer are located in the European Economic Area (EEA). It also sets out a number of business rule provisions that require affected parties to amend their business practices (unless their current practice already complies with the provisions).
- 1.3** The PSR is the main competent authority for monitoring and enforcing the IFR in the UK. The Treasury has also assigned roles to other bodies, including the Financial Conduct Authority (FCA).² The FCA has a role under three of the four IFR business rule provisions which are the focus of this consultation.³
- 1.4** We have already issued guidance on our approach to monitoring and enforcing compliance with the IFR provisions which were in effect by 9 December 2015. This 'Phase 1' guidance is available on 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 giving the PSR its powers was published on 17 November: www.legislation.gov.uk/ukSI/2015/1911/contents/made

³ Articles 8, 9 and 10.

website.⁴ It also describes our powers and procedures as the competent authority for the IFR and our approach to applying penalties for non-compliance.

- 1.5** This is Phase 2 of our guidance consultation, covering our approach to the remaining IFR provisions, which come into effect on 9 June 2016.
- 1.6** The draft guidance set out in Annexes 1, 2, and 3 of this consultation paper will be finalised following the consultation. It will then be inserted into our existing Phase 1 guidance document to create one consolidated guidance document relevant to all the provisions of the IFR. This will be published on our website.
- 1.7** We welcome responses to our consultation question, which we will review and consider when we finalise our approach.

The application of the IFR in the UK

- 1.8** 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.
- 1.9** The IFR is an EU regulation 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.

Our role in respect of the IFR

- 1.10** The Treasury is responsible for designating one or more competent authorities under the IFR. In the Statutory Instrument published on 17 November 2015⁵, 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.
- 1.11** The Treasury also assigned a role to the FCA, where certain provisions of the IFR overlap with the FCA's role as supervisor under the Payment Services Regulations 2009.⁶ We have consulted the FCA in developing the draft guidance set out in Annexes 1, 2 and 3 below, in connection with Articles 8, 9 and 10 of the IFR.

Draft guidance

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

⁴ www.psr.org.uk/psr-publications/policy-statements/final-guidance-PSR-approach-as-competent-authority-for-IFR

⁵ www.legislation.gov.uk/ukSI/2015/1911/contents/made

⁶ www.legislation.gov.uk/ukSI/2009/209/contents/made

1.13 The draft guidance set out in Annexes 1, 2 and 3 explains our approach to monitoring and enforcing the IFR provisions that will be in force by 9 June 2016. This will include:

- gathering initial compliance reports from relevant parties
- investigating complaints about non-compliance with the IFR

1.14 The draft guidance will be of interest to payment card schemes and participants, and those who use the services provided by the schemes.

Consultation question

Do you have any comments on the draft guidance?

Next steps

1.15 The next steps for the PSR will be to:

- review responses to the consultation and revise our draft guidance as appropriate
- consolidate the Phase 1 guidance already published with the final Phase 2 guidance and publish a complete guidance document

Annex 1

Draft guidance: Business Rules

- We set out draft guidance covering the four IFR business rules provisions that come into force on 9 June 2016: Articles 7, 8, 9 and 10.
- The final version of this guidance will be consolidated within Chapter 5 ('Business Rules') of the Phase 1 guidance document already published.

Article 7: Separation of payment card scheme and processing entities

1.1 This Article states:

1. Payment card schemes and processing entities:
 - a. shall be independent in terms of accounting, organisation and decision-making processes;
 - b. shall not present prices for payment card scheme and processing activities in a bundled manner and shall not cross-subsidise such activities;
 - c. shall not discriminate in any way between their subsidiaries or shareholders on the one hand and users of payment card schemes and other contractual partners on the other hand and shall not in particular make the provision of any service they offer conditional in any way on the acceptance by their contractual partner of any other service they offer.
2. The competent authority of the Member State where the registered office of the scheme is located may require a payment card scheme to provide an independent report confirming its compliance with paragraph 1.
3. Payment card schemes shall allow for the possibility that authorisation and clearing messages of single card-based payment transactions be separated and processed by different processing entities.
4. Any territorial discrimination in processing rules operated by payment card schemes shall be prohibited.
5. Processing entities within the Union shall ensure that their system is technically interoperable with other systems of processing entities within the Union through the use of standards developed by international or European standardisation bodies. In addition, payment card schemes shall not adopt or apply business rules that restrict interoperability among processing entities within the Union.
6. The European Banking Authority (EBA) may, after consulting an advisory panel as referred to in Article 41 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council (1), develop draft regulatory technical standards establishing the requirements to be complied

with by payment card schemes and processing entities to ensure the application of point (a) of paragraph 1 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by 9 December 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'

Separation (Article 7(1))

- 1.2** The EBA has the mandate to develop regulatory technical standards (RTS) for separating payment card schemes and processing entities. The final RTS will set out the requirements for payment card schemes and processing entities to comply with Article 7(1)(a) of the IFR.
- 1.3** Card schemes and processing entities must ensure that there is no cross-subsidisation of costs between these activities and may not charge their customers a single ('bundled') price for both activities.
- 1.4** Card schemes affected by Article 7(1) may not give their shareholder or subsidiary processing entities any preferential treatment (whether on price or quality), or give them information that is not available to other processing entities using or contracting with the scheme. Also, card schemes may not make any of their services contingent on the customer accepting any processing service, or vice versa.
- 1.5** The principles in paragraph 1.4 apply equally to processing entities in respect of their treatment of payment card schemes.

Other provisions of Article 7

- 1.6** Under Article 7(2), payment card schemes can be required to confirm their compliance with the separation requirements of Article 7(1) through an independent report to the competent authority in the Member State where the registered office of the scheme is located.
- 1.7** Article 7(3) requires that card schemes allow for the possibility that authorisation and clearing messages be handled by different processing entities. This interacts with Article 7(1), which requires that schemes do not discriminate against issuers or acquirers who use another entity for one (or both) of these processing services. For instance, prioritising the clearing of transactions which have been authorised through the card scheme's own network over transactions which have been authorised through a different processing entity would be considered a discriminatory practice.
- 1.8** Article 7(4) prohibits any territorial discrimination in a card scheme's processing rules. This includes, but is not limited to, exclusive territory clauses or other territorial restrictions which discriminate against independent processing entities. We note that the term 'territorial discrimination' is not defined in the IFR, but consider that it may include technical or operational requirements that have a discriminatory effect.
- 1.9** Article 7(5) has two elements, aimed at different regulated persons. The first requires processing entities within the EEA to ensure that their systems are technically interoperable with other processing entities' systems by using standards developed by international or European standardisation bodies. Under the second element, card schemes must not adopt or apply business rules that restrict interoperability among processing entities with the EEA. Examples include limiting the choice of messaging formats, and not facilitating the use of alternative formats (for example, by restricting the use of translation services).

Article 8: Co-badging and choice of payment brand or payment application

1.10 This Article sets out obligations for card schemes, issuers, acquirers and merchants. It states:

- ‘1. Any payment card scheme rules and rules in licensing agreements or measures of equivalent effect that hinder or prevent an issuer from co-badging two or more different payment brands or payment applications on a card-based payment instrument shall be prohibited.
2. When entering into a contractual agreement with a payment service provider, the consumer may require two or more different payment brands on a card-based payment instrument provided that such a service is offered by the payment service provider. In good time before the contract is signed, the payment service provider shall provide the consumer with clear and objective information on all the payment brands available and their characteristics, including their functionality, cost and security.
3. Any difference in treatment of issuers or acquirers in scheme rules and rules in licensing agreements concerning co-badging of different payment brands or payment applications on a card-based payment instrument shall be objectively justified and non-discriminatory.
4. Payment card schemes shall not impose reporting requirements, obligations to pay fees or similar obligations with the same object or effect on card issuing and acquiring payment service providers for transactions carried out with any device on which their payment brand is present in relation to transactions for which their scheme is not used.
5. Any routing principles or equivalent measures aimed at directing transactions through a specific channel or process and other technical and security standards and requirements with respect to the handling of two or more different payment brands and payment applications on a card-based payment instrument shall be non-discriminatory and shall be applied in a non-discriminatory manner.
6. Payment card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.

Payees shall retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular payment brand or payment application but payees shall not prevent the payer from overriding such an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee.’

Definition of co-badging

1.11 Co-badging is defined by Article 2(31) of the IFR as a card-based payment instrument which includes:

- two or more payment brands, or
- two or more payment applications of the same brand

1.12 Article 2(30) of the IFR states that a payment brand is any signifier which denotes the payment card scheme under which card-based payment transactions may be carried out. A co-badged payment instrument will allow the payer to use any included scheme for a given transaction. For example, if PayCard and CardPay are payment brands, a co-badged payment instrument will feature both brands and allow the payer to initiate a transaction under either scheme.

1.13 Article 2(21) of the IFR states that a payment application is any computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders. For example, a payer may have two applications loaded on to her mobile phone: one which enables her to initiate a PayCard payment transaction and the other which enables her to initiate a CardPay payment transaction. In this example, the mobile phone is a co-badged payment instrument because it allows the owner to initiate a transaction under either card scheme.

The relationship between the issuer and the payer

1.14 Article 8(2) states that ‘the consumer may require two or more different payment brands on a card-based payment instrument provided that such a service is offered by the payment services provider’. The issuer can decide which payment brands to issue (for example, it may issue under the PayCard and CardPay brands, or only under the CardPay brand). However, if an issuer offers more than one payment brand, an eligible consumer may demand one co-branded card-based payment instrument (for example, one plastic card carrying both brands), instead of receiving separate card-based payment instruments for each brand (two plastic cards).

1.15 In other words, if the issuer has offered the consumer two brands via separate card based-payment instruments, it must co-badge them if a consumer requests it. In practical terms, this is likely to arise if the consumer is:

- an existing customer with a product carrying one payment brand who successfully applies for another product carrying a separate brand
- a new customer who successfully applies for two differently branded products simultaneously

1.16 Before a new or existing customer signs a new contract, the issuer must give them clear and objective information on all the payment brands they offer and their characteristics (including their functionality, cost and security).

1.17 The issuer decides which card-based payment instruments to offer its customers. The issuer can refuse to offer a customer a product, or to only offer a product subject to a customer’s status and eligibility.

The relationship between the scheme and issuing and acquiring PSPs

1.18 Under Article 8(1), card schemes’ rules, and the terms of licensing agreements between schemes and issuers, must not hinder or prevent issuers from co-badging two or more payment brands or payment applications. This also applies to any other measures (such as scheme practices rather than rules) which have an equivalent effect.

1.19 Under Article 8(3), if a card scheme treats any of its issuers or acquirers differently concerning co-badging (under the card scheme rules or the terms of licensing agreements with those PSPs), we expect the scheme to be able to demonstrate that the differential treatment is non-discriminatory and that objective justifications exist for it.

1.20 Under Article 8(4), card schemes cannot impose reporting requirements, obligations to pay fees or similar obligations on issuers and acquirers, for transactions that do not use their payment brand. For example, if a card bears the PayCard and CardPay brands, PayCard cannot charge a fee for transactions made using that card under the CardPay scheme.

Routing and handling of transactions

- 1.21** Under Article 8(5), schemes, issuers, acquirers, processing entities and other technical service providers must ensure that there is no discrimination in the way they handle transactions under different payment brands or applications by way of any routing principles or equivalent directing of transactions through a given channel or process. The same applies to other technical or security standards and requirements. For example, it would be discriminatory to prioritise routing of a transaction if the payee selects PayCard from the co-badged card instead of CardPay. Similarly, it would be discriminatory to impose additional security checks for transactions using CardPay from the co-badged card instead of PayCard.

Choice and selection of payment brand or payment application

- 1.22** Article 8(6) lays down three principles relevant to the choice and selection of different payment brands or payment applications from a co-badged payment instrument.
- 1.23** Firstly, card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or on equipment at the point of sale which limits the choice of payment brand or payment application. These parties are not permitted to 'switch-off' a given payment brand or payment application. They must not programme the co-badged payment instrument, or the equipment used to accept it, in a way that limits its co-badged functionality or restricts users (that is, payers and payees) from choosing which payment brand or payment application to use.
- 1.24** Secondly, merchants **can** install automatic priority selection mechanisms in point of sale equipment. They are allowed to programme their equipment to default to one payment brand or application over another.
- 1.25** Thirdly, cardholders must generally be able to override this kind of automatic selection. This means that if a merchant accepts a brand and category of card-based payment instrument, the payer can choose to pay that way, even if the merchant's point of sale equipment does not treat it as the priority or default choice. However, Recital 40 of the IFR refers to technical feasibility and we consider that the consumer should be given the ability to override the merchant's selection unless it is not technically feasible to do so. An example where it may not be technically feasible could be contactless payment terminals in transport networks where there is a card reader but no other point of sale equipment.

Article 9: Unblending

- 1.26** This Article states:
1. Each acquirer shall offer and charge its payee merchant service charges individually specified for different categories and different brands of payment cards with different interchange fee levels unless payees request the acquirer, in writing, to charge blended merchant service charges.
 2. Acquirers shall include in their agreements with payees individually specified information on the amount of the merchant service charges, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the payee subsequently makes a different request in writing.'
- 1.27** The following paragraphs describe our expectations of acquirers under this Article.

Pre-contractual stage

- 1.28** At the time of negotiating merchant service charges (MSCs) with merchants, acquirers must offer MSCs which are broken down for the various different categories (that is, prepaid cards, debit cards, credit cards and commercial cards⁷) and different brands (such as our example of PayCard and CardPay) of payment cards with different interchange fee levels. For example, all PayCard branded consumer credit cards attracting the same interchange fee can be grouped together under one MSC, but if PayCard has three types of consumer credit card which each attract a unique interchange fee rate, the acquirer would need to offer a separate MSC for each of the three types of credit card. There is no requirement that the acquirer offers separate MSCs at different levels. The acquirer would satisfy the Article 9(1) requirement by offering separate MSCs even if they were priced identically.
- 1.29** Article 2(12) of the IFR defines an MSC as 'a fee paid by the payee to the acquirer in relation to card-based payment transactions'. We consider that, under this definition, one-off or periodic fees are not part of the MSC.⁸ The MSC relates to the fees and charges that are payable on each transaction. These may be fixed for every transaction or related to the value of each individual transaction.
- 1.30** The Article 9(1) requirement applies from 9 June 2016. It applies to:
- the acquirer's MSC offering to new customers on or after that date
 - the acquirer's discussions of changes to MSCs with existing customers on or after that date
- In other words, this requirement covers all occasions, on or after 9 June 2016, when the acquirer is proposing pricing to merchants.
- 1.31** Merchants can make a request in writing to acquirers to offer and charge blended MSCs – where the individual elements of the charge are not broken down. Acquirers must comply with these requests.
- 1.32** For example, if the merchant requests complete blending in writing, the acquirer is permitted to charge one single blended MSC covering all brands and categories of payment cards, irrespective of the underlying differences in interchange fee levels. Alternatively, the merchant might make a written request for partial blending (for example, grouping all credit cards of any brand, or all categories of PayCard card), in which case the acquirer is permitted to charge the specified partially blended MSCs. If the merchant does not make a written request, the MSCs must be fully unblended as described above.
- 1.33** An oral request by a merchant for blending is not sufficient; the request must be in writing. The IFR does not stipulate the form written requests must take. We consider that electronic forms of written communication are sufficient. Acquirers should consider the medium used, including whether it is recordable and storable, since they may be required to provide evidence that a written request was received from any merchant which is charged a blended rate.

Agreements between acquirers and merchants

- 1.34** Acquirers' agreements with merchants must specify the amount of each MSC, and show separately the applicable interchange fee and scheme fees for each category and brand of payment cards.⁹
- 1.35** We recognise that interchange fees and scheme fees may differ significantly and may change frequently. For example, interchange fees may differ even amongst the same brand and category of card, for example depending on the type of transaction (e.g. cardholder present or not-present, secure or non-secure, etc.) and scheme fees may differ depending on factors such as the volume of transactions.

⁷ See Regulation 10(5). The categories are: consumer prepaid; consumer debit; consumer credit; commercial prepaid; commercial debit; and commercial credit.

⁸ For the avoidance of doubt, acquirers must still comply with the requirements of the Payment Services Regulations 2009, including in respect of all fees and charges paid by merchants to the acquirer, whether or not they are part of the MSC.

⁹ See footnote 8.

Acquirers should provide as much information to merchants on the interchange fees and scheme fees applicable to different brands and categories of cards as possible while ensuring that the information is understandable and meaningful.

- 1.36** Merchants can subsequently make a request in writing to receive different information. This means that acquirers must always present merchants with an initial agreement with all relevant information as required by Article 9(2). The merchant can only ask for different charging information after this first agreement has been issued. For example, the merchant might ask to be given only the MSC information (without separate interchange fee and scheme fee elements). An oral request is not sufficient: the request must be in writing. The IFR does not stipulate the form written requests must take. We consider that electronic forms of written communication are sufficient. Acquirers should consider the medium used, including whether it is recordable and storable, since they may be required to provide evidence that a written request was received from any merchant they provided different information to.
- 1.37** The requirements of Article 9(2) apply to new and existing agreements with merchants.

Article 10: 'Honour All Cards' rule

1.38 This Article states:

- '1. Payment card schemes and payment service providers shall not apply any rule that obliges payees accepting a card-based payment instrument issued by one issuer also to accept other card-based payment instruments issued within the framework of the same payment card scheme.
- 2 Paragraph 1 shall not apply to consumer card-based payment instruments of the same brand and of the same category of prepaid card, debit card or credit card subject to interchange fees under Chapter II of this Regulation.
3. Paragraph 1 is without prejudice to the possibility for payment card schemes and payment service providers to provide that cards may not be refused on the basis of the identity of the issuer or of the cardholder.
4. Payees that decide not to accept all cards or other payment instruments of a payment card scheme shall inform consumers of this, in a clear and unequivocal manner, at the same time as they inform consumers of the acceptance of other cards and payment instruments of the payment card scheme. Such information shall be displayed prominently at the entrance of the shop and at the till.

In the case of distance sales, this information shall be displayed on the payee's website or other applicable electronic or mobile medium. The information shall be provided to the payer in good time before the payer enters into a purchase agreement with the payee.

5. Issuers shall ensure that their payment instruments are electronically identifiable and, in the case of newly issued card-based payment instruments, also visibly identifiable, enabling payees and payers to unequivocally identify which brands and categories of prepaid cards, debit cards, credit cards or commercial cards are chosen by the payer.'

Scheme rules and merchant service contracts

- 1.39** Article 10(1), read alongside Articles 10(2) and (3), imposes limits on the kinds of ‘Honour All Cards Rule’ (HACR) that can be imposed on merchants by card scheme rules or the terms of their merchant service contracts with acquirers. Under HACRs, the IFR allows card schemes and acquirers to stipulate that merchants must accept all interchange fee regulated card-based payment instruments belonging to the same payment brand. Card transactions where the issuer and/or the acquirer are located outside of the EEA are not regulated under the IFR and so are not subject to the Article 10 limitations on permissible HACRs.
- 1.40** The following tables show the kinds of HACR that can and cannot be imposed from 9 June 2016. For illustrative purposes, we use the hypothetical brand PayCard.

Scheme rules and merchant service contracts **CAN** require a merchant with an acquirer located in the EEA:

who accepts one type of PayCard-branded consumer credit card issued by an issuer located in the EEA to accept all types of these cards

who accepts one type of PayCard-branded consumer debit card issued by an issuer located in the EEA to accept all types of these cards

who accepts one type of PayCard-branded consumer prepaid card issued by an issuer located in the EEA to accept all types of these cards

who accepts one type of PayCard-branded card issued by an issuer located outside of the EEA to accept all types of these cards

to be neutral as to the identity of the issuer and/or cardholder, such that if they honour a given type of PayCard-branded card for one issuer/cardholder they must honour it for all issuers/cardholders

Scheme rules and merchant service contracts **CANNOT** require a merchant with an acquirer located in the EEA:

who accepts PayCard-branded cards belonging to one of the following categories to accept cards belonging to any other category:

- consumer credit cards issued by an issuer located in the EEA
- consumer debit cards issued by an issuer located in the EEA
- consumer prepaid cards issued by an issuer located in the EEA

who accepts one type of PayCard-branded commercial card issued by an issuer located in the EEA to accept all types of these cards

who accepts PayCard-branded consumer cards issued by an issuer located in the EEA to accept PayCard-branded commercial cards issued by an issuer located in the EEA, or vice versa

who accepts PayCard-branded cards issued by an issuer located in the EEA to accept PayCard-branded cards issued by an issuer located outside of the EEA, or vice versa

Merchants’ obligations in respect of the point of sale

- 1.41** Under Article 10(4), merchants that decide not to accept all cards must inform consumers of this at the same time, and as prominently, as they inform them of which cards will be accepted. For example, if a restaurant owner displays the PayCard logo in his window, but does not accept PayCard commercial cards, he should indicate this in his window display.
- 1.42** This information must be displayed, in legible and intelligible form, clearly and prominently at the entrance of the shop and at the point of sale (for example, by the till). It will not be sufficient for a merchant to only inform a customer verbally at the point of sale. Failure to inform properly may also lead to breaches of other legislation – for example, the Consumer Protection from Unfair Trading Regulations 2008.

- 1.43** In the case of distance sales, this information should be displayed prominently on the payee’s website or any other electronic or mobile medium (such as a mobile phone app). The information should be provided in good time before the payer enters into a purchase agreement with the payee. We would expect the payee to see this information displayed prominently at the first opportunity and before the ‘payment page’. The consumer must not need to click through several pages before they become aware of any limitations on card acceptance.

Electronic and visual identification of card-based payment instruments

- 1.44** Article 10(5) lays down requirements which enable payees and payers to unequivocally identify which brands and categories of cards the payer has chosen.
- 1.45** All issuers shall ensure that all their card-based payment instruments are electronically identifiable in terms of brand and category. This requirement applies to existing and new payment instruments.
- 1.46** Newly issued card-based payment instruments shall also be visually identifiable, displaying clearly and visibly the brand and category.
- 1.47** The IFR requires that any card-based payment instrument is categorised as one of the following:

[Consumer] Prepaid	Commercial Prepaid
[Consumer] Debit	Commercial Debit
[Consumer] Credit	Commercial Credit

- 1.48** We consider that consumer cards do need not be specifically identified with the label ‘consumer’ (although issuers can choose to do so), and that can they can be identified by the absence of the label ‘commercial’.

Annex 2

Draft guidance: Monitoring and enforcement of the IFR

- We set out draft guidance on our approach to monitoring and enforcing compliance with Articles 7, 8, 9 and 10 of the IFR.
- The final version of this guidance will be consolidated within Chapter 6 ('Monitoring and enforcement of the IFR') of the Phase 1 guidance document already published.
- We will gather compliance reports from relevant parties.
- We will investigate complaints about non-compliance with the IFR subject to a decision that the investigation is an administrative priority for the PSR.

Monitoring compliance with Articles 7, 8, 9 and 10

Article 7

Separation – Article 7(1)

- 2.1** Each scheme affected by Article 7(1) operating in the UK should provide us with initial compliance reports. The first report should confirm that the scheme is compliant with the requirements of Article 7(1)(b) and (c), and describe the steps it has taken to become compliant. A second report should include details of how the scheme has complied with the final RTS developed by the EBA and adopted by the European Commission in respect of Article 7(1)(a).
- 2.2** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme.
- 2.3** After we receive the initial Article 7(1) compliance reports, we will discuss with each scheme whether any further action is needed for it to be compliant.
- 2.4** We then intend to follow a mainly complaints-led approach to monitoring compliance with this provision. Any party that wants to complain about a breach of Article 7(1) should contact us in writing (for example, if they have evidence of discriminatory practices breaching Article 7(1)(c)). However, we may use our powers under the Payment Card Interchange Fee Regulations 2015 (PCIFRs) to obtain information about compliance with Article 7(1) by any scheme that operates in the UK.

Independent compliance reporting under Article 7(2) of the IFR

- 2.5** Article 7(2) of the IFR allows the competent authority of the Member State where the registered office of the scheme is located to require a payment card scheme to provide an independent report confirming its compliance with the separation requirements of Article 7(1). We may decide to require

the provision of independent reports in respect of the card schemes affected by Article 7(1) which have registered offices in the UK using our powers under the PCIFRs.

- 2.6** For card schemes which operate in the UK but do not have registered offices in the UK, we expect to engage with the competent authority in the Member State where the scheme's registered office is.

Other provisions of Article 7

- 2.7** We will expect each scheme affected by Articles 7(3), 7(4) and 7(5) to provide us with an initial compliance report. The report should confirm that the scheme is compliant with the provisions on authorisation and clearing messages and processing rules, describing the steps taken to review business rules (and to revise them as necessary).
- 2.8** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme.
- 2.9** After we receive the initial compliance report, we will discuss with each scheme whether any further action is needed for it to be compliant.
- 2.10** We then intend to follow a mainly complaints-led approach to monitoring compliance with these provisions. Any party that wants to complain about a breach of Article 7(3), 7(4) or 7(5) should contact us in writing.

Article 8

The relationship between the scheme and the issuing and/or acquiring PSPs

- 2.11** We will expect each card scheme affected by Articles 8(1), 8(3) and 8(4) to provide us with an initial compliance report. The report should confirm that the scheme is compliant with these three requirements related to co-badging, describing the steps taken to review scheme rules and practices, and the terms of licensing agreements (and to revise them as necessary).
- 2.12** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme.
- 2.13** After we receive the initial compliance report, we will discuss with each scheme whether any further action is needed for it to be compliant.
- 2.14** We then intend to follow a mainly complaints-led approach to monitoring compliance with these provisions. Any party that wants to complain about a breach of Article 8(1), 8(3) or 8(4) should contact us in writing.

The relationship between the issuer and the consumer

- 2.15** We do not intend to request an initial compliance report from issuers affected by Article 8(2). Instead, we intend to follow a mainly complaints-led approach to monitoring compliance by issuers with the requirements under Article 8(2) to co-badge payment brands at the request of the consumer, and to provide information on the payment brands available.
- 2.16** The FCA also has a role in monitoring compliance with Article 8(2) and taking action where appropriate.
- 2.17** Any party that wants to complain to the PSR about a breach of Article 8(2) should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

Routing and handling of transactions

- 2.18** We will expect each card scheme and each acquirer affected by Article 8(5) to provide us with an initial compliance report. The report should confirm that the scheme or acquirer is compliant with the provisions on routing and handling of transactions on co-badged cards, describing the steps taken to review practices and procedures (and to revise them as necessary).
- 2.19** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme.
- 2.20** After we receive the initial compliance report, we will discuss with each scheme whether any further action is needed for it to be compliant.
- 2.21** The FCA also has a role in monitoring compliance with Article 8(5) and taking action where appropriate. We will share the initial compliance reports we receive with the FCA.
- 2.22** Following submission of the initial compliance reports we intend to follow a mainly complaints-led approach to monitoring compliance by schemes and acquirers with this provision. In as far as issuers, processing entities and other technical service providers are affected by this provision, we also intend to follow a mainly complaints-led approach to monitoring their compliance. Any party that wants to complain to the PSR about a breach of Article 8(5) should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

Choice and selection of payment brand or payment application

- 2.23** We will expect each card scheme and each acquirer affected by Article 8(6) to provide us with an initial compliance report. The report should confirm that the scheme or acquirer is compliant with the prohibition on automatic means of limiting the choice of payment brand or payment application, describing the steps taken to review hardware and software (and to make such changes as necessary). Acquirers will also be expected to report on their arrangements for giving merchants the option to install automatic mechanisms in POS equipment which make a priority selection of a particular payment brand or payment application and, where this option is exercised, how payees are able to override this.
- 2.24** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme and acquirer.
- 2.25** After we receive the initial compliance report, we will discuss with each scheme and acquirer whether any further action is needed for it to be compliant.
- 2.26** The FCA also has a role in monitoring compliance with Article 8(6) and taking action where appropriate. We will share the initial compliance reports we receive with the FCA.
- 2.27** Following submission of the initial compliance reports we intend to follow a mainly complaints-led approach to monitoring compliance by schemes and acquirers with this provision. We also intend to follow a mainly complaints-led approach to monitoring compliance by issuers, processing entities, other technical service providers and merchants with their own requirements under this provision in respect of hardware and software for which they are responsible. Any party that wants to complain to the PSR about a breach of Article 8(6) should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

Article 9

- 2.28** We will expect each acquirer affected by Article 9 to provide us with an initial compliance report. The report should confirm that the acquirer is compliant with the requirements to offer and charge unblended MSCs and to include information on the MSC components in its agreements with merchants, describing what it has done to become compliant. Where merchants have requested in writing that their acquirer charges blended MSCs and/or that the information provided in the agreement be different, we would expect each acquirer to provide details on how these written requests are made and documented.
- 2.29** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each acquirer.
- 2.30** After we receive the initial compliance report, we will discuss with each acquirer whether any further action is needed for it to be compliant.
- 2.31** The FCA also has a role in monitoring compliance with Article 9 and taking action where appropriate. We will share the initial compliance reports we receive with the FCA.
- 2.32** Following submission of the initial compliance reports we intend to follow a mainly complaints-led approach to monitoring compliance with this provision. Any party that wants to complain to the PSR about a breach of Article 9 should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

Article 10

Scheme rules and merchant service contracts

- 2.33** We will expect each card scheme and acquirer affected by Article 10(1) to provide us with an initial compliance report. The report should confirm that the scheme's rules or the acquirer's merchant service contracts comply with the IFR requirements on the kind of Honour All Cards Rule (HACR) that can be imposed on merchants, describing the steps taken to review these rules or contracts and (and to revise them as necessary).
- 2.34** We will discuss the required content, timing and arrangements for submission of the initial compliance reports separately with each scheme and acquirer.
- 2.35** After we receive the initial compliance report, we will discuss with each scheme and acquirer whether any further action is needed for it to be compliant.
- 2.36** The FCA also has a role in monitoring compliance with Article 10(1) and taking action where appropriate. We will share the initial compliance reports we receive with the FCA.
- 2.37** Following submission of the initial compliance reports we intend to follow a mainly complaints-led approach to monitoring compliance with this provision. Any party that wants to complain to the PSR about a breach of Article 10(1) should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

Merchants' obligations in respect of the point of sale

- 2.38** The PCIFRs assign a role to both the PSR and to trading law bodies in respect of the Article 10(4) obligation on merchants to display information on the cards they do and do not accept.

2.39 The PCIFRs adds Article 10(4) of the IFR to the list of EU Directives and Regulations which can be enforced under the regime set out in Part 8 of the Enterprise Act 2002 (EA02) by the 'general enforcers', who together are:

- the Competition and Markets Authority (CMA)
- every local weights and measures authority in Great Britain (often referred to as local authority trading standards services, or LATSS)
- the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI)

2.40 We do not intend to undertake our own proactive monitoring activity or to request information or reports from UK merchants about their compliance with Article 10(4). However, we may respond to complaints about non-compliance by merchants that are raised with us directly, or passed on to us by any of the EA02 general enforcers.

2.41 The Citizens Advice website¹⁰ has advice for consumers on how to report a merchant to Trading Standards. They can also find out their local Trading Standards office from the Trading Standards Institute (TSI) website.¹¹ Any party that wants to complain to us should do so in writing. A decision on whether the PSR, CMA, LATSS or DETINI, or more than one of these authorities, should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each authority.

2.42 To ensure we co-operate appropriately with the general enforcers, as required under the PCIFRs, we expect to engage with them through forums including the 'Part 8 EA02 Concurrency Group'. We will also engage with the Chartered Trading Standards Institute (CTSI), which has responsibility for producing the majority of education and guidance for businesses about their responsibilities under consumer protection legislation.

Electronic and visual identification of card-based payment instruments

2.43 We do not intend to request an initial compliance report from issuers affected by Article 10(5). We intend to follow a mainly complaints-led approach to monitoring compliance by issuers with the requirements under Article 10(5) to ensure that their payment instruments are electronically and visually identifiable.

2.44 The FCA also has a role in monitoring compliance with Article 10(5) and taking action where appropriate.

2.45 Any party that wants to complain to us about a breach of Article 10(5) should contact us in writing. A decision on whether the PSR, the FCA or both regulators should work on a given complaint would be made on a case-by-case basis, taking into account the nature of the complaint and the roles and responsibilities of each regulator.

¹⁰ www.citizensadvice.org.uk/consumer/get-more-help/report-to-trading-standards/

¹¹ www.tradingstandards.uk/advice/index.cfm#postcodesearchform

Annex 3

Minor amendments to published Phase 1 guidance

- In this chapter, we set out the minor changes that will be incorporated into Chapter 1 ('Overview') of the Phase 1 guidance document already published.

- 3.1** Our Phase 1 guidance document published on 24 March 2016 contains, in Chapter 1, an overview of our role as a UK competent authority for the IFR and the purpose of the guidance document.
- 3.2** Minor changes are necessary to update Chapter 1 of our published guidance in light of the Phase 2 IFR provisions coming into force on 9 June 2016.

Changes to the Phase 1 guidance

- 3.3** Changes to Chapter 1 ('Overview') of the Phase 1 guidance will be made as follows. Additions are shown in red and underlined. Deletions are shown in red and struck through.
- 3.4** In the summary box:

This document contains guidance on our approach to monitoring compliance with the Interchange Fee Regulation (IFR) provisions capping interchange fees or equivalent issuer compensation (Articles 3, 4 and 5) and the business rules provisions ~~that were brought into force by 9 December 2015~~ (Articles 6, 7, 8, 9, 10, 11 and 12).

It also includes guidance on our powers and procedures under the IFR as well as guidance on penalties for non-compliance with the IFR.

- 3.5** In paragraph 1.3:

The PSR is responsible for monitoring compliance with the IFR in the UK and for taking enforcement action where appropriate. We will cooperate with other competent authorities both in the UK and in other Member States as appropriate. This will include close cooperation with the Financial Conduct Authority (FCA) in monitoring compliance with Articles 8(2), (5) and (6), 9, 10(1) and 10(5), 11 and 12 in the UK.

3.6 In paragraph 1.8:

The guidance includes:

- **the classification of schemes for IFR purposes**
- **interchange fee caps and the possible exemption from those caps for some three-party schemes**
- **the business rule provisions ~~that were in force by 9 December 2015~~**
- **our approach to monitoring compliance with the IFR**
- **our powers and procedures under the IFR**
- **penalties under the IFR**

Annex 4

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 (MSC) (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 service providers and infrastructure providers.
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, published in the Official Journal of the EU on 5 December 2007, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC of 13 November 2007.
PSD2	Revised Directive on Payment Services (PSD2).
payment service provider (IFR definition)	'Payment service provider' means any natural or legal person authorised to provide the payment services listed in the Annex to Directive 2007/64/EC or recognised as an electronic money issuer in accordance with Article 1(1) of Directive 2009/110/EC. A payment service provider can be an issuer or an acquirer or both.
PCIFRs	The Payment Card Interchange Fee Regulations 2015 (SI 2015/1911), which support the implementation of the IFR in the UK, as amended from time to time.
processing entity (IFR definition)	Any natural or legal person providing payment transaction processing services.

Term or acronym	Description
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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