

Consultation paper

Interchange Fee  
Regulation (IFR)  
Guidance:  
EU withdrawal  
consequential changes

Proposed amendments to the Guidance on  
our approach to monitoring and enforcing  
compliance with the IFR

April 2021

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We welcome your views on this consultation. If you would like to provide comments, please send these to us by **5pm on 21 May 2021**.

You can email your comments to [IFRcompliance@psr.org.uk](mailto:IFRcompliance@psr.org.uk) or write to us at:

IFR compliance monitoring Team  
Payment Systems Regulator  
12 Endeavour Square  
London E20 1JN

We will consider your comments when preparing our response to this consultation.

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 non-disclosure. If you want to claim commercial confidentiality over specific items in your response, you must identify those specific items which you 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 if we receive such a request. Any decision we make not to disclose a response can be reviewed by the Information Commissioner and the Information Rights Tribunal.

You can download this consultation paper from our website:

<https://psr.org.uk/publications/consultations/cp21-5-interchange-fee-regulation-ifr-guidance-eu-withdrawal-consequential-changes/>

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# Consultation

**1.1** We are proposing amendments to our Guidance on the Interchange Fee Regulation, to take account of:

- the UK's withdrawal from the European Union (EU) (referred to here as EU exit)
- changes to the regulatory framework

This consultation sets out our proposals.

## Why we're doing this?

**1.2** In 2016 we published our *Guidance on the PSR's approach as a competent authority for the EU Interchange Fee Regulation* (the Guidance)<sup>1</sup>, setting out how we monitor and enforce the EU Interchange Fee Regulation (EU IFR, 2015).<sup>2</sup> It introduced caps on interchange fees for certain card transactions, and business rules governing parties' activities.

**1.3** Most of our proposed amendments to the Guidance reflect legislative changes resulting from the UK leaving the EU. These changes include:

- the conversion of EU legislation into domestic legislation
- amendments to ensure the legislation operated effectively after EU exit, often referred to as 'onshoring'

Annex 1 provides further details of these legislative changes.

**1.4** The onshored IFR took effect at 11pm on 31 December 2020, at the end of the EU exit implementation period. This is the IFR as it now applies in the UK. In this consultation paper we refer to this as the 'UK IFR'.<sup>3</sup>

**1.5** We intend to update the Guidance to reflect the changes made to create the UK IFR.

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1 The latest version of the Guidance as published on 16 June 2020. See: <https://www.psr.org.uk/publications/general/guidance-on-the-psr-s-approach-as-a-competent-authority-for-the-eu-interchange-fee-regulation-june-2020/>

2 Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, pages 1–15. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0751>

3 In the draft Guidance in Annex 2, we use the term 'IFR' to refer to the UK IFR.

- 1.6** We also propose to update the Guidance to reflect a small number of changes to the regulatory framework since the Guidance was first published, which are not connected to EU exit (see paragraph 1.10).
- 1.7** The amendments we propose in this consultation are only designed to deal with these immediate needs.

## The application of the IFR in the UK following withdrawal from the EU

- 1.8** The UK IFR makes provisions for how card schemes, issuers and acquirers must operate in the UK. Our proposed amendments to the Guidance reflect the principal differences between the EU IFR and the UK IFR:
- a. **The different scope of the UK IFR:** The UK IFR caps UK transactions (i.e. where the point of sale, acquirer and card issuer are all based in the UK). It does not cap UK/EU cross-border transactions. To reflect this, we propose to replace references to the European Economic Area (EEA) with references to the United Kingdom.
  - b. **The term ‘competent authority’ is not used in the UK IFR:** The PSR and Financial Conduct Authority (FCA) are not designated as competent authorities under the UK IFR, so we propose to remove the use of the term ‘competent authority’. Despite this change, we and the FCA retain our roles and responsibilities in relation to the UK IFR.<sup>4</sup>
  - c. **The replacement of the Regulatory Technical Standards (RTS) Regulation<sup>5</sup>** (adopted under Article 7 of the EU IFR – which introduced specific requirements relating to the independence of payment card schemes and processing entities): This was replaced with the onshored RTS Regulation.<sup>6</sup> We propose to replace references to the former with the latter.

4 The Statutory Instrument that gave the PSR its powers was published on 17 November 2015: The Payment Card Interchange Fee Regulations 2015, (SI 2015/1911). Available at: [www.legislation.gov.uk/ukxi/2015/1911/contents/made](http://www.legislation.gov.uk/ukxi/2015/1911/contents/made)

This was amended by The Interchange Fee (Amendment) (EU Exit) Regulations 2019 (SI 2019/284) (available at: [www.legislation.gov.uk/ukxi/2019/284/contents/made](http://www.legislation.gov.uk/ukxi/2019/284/contents/made)). However, the PSR’s role and responsibilities remain essentially the same as they were prior to EU exit.

The FCA’s powers in relation to the UK IFR are now contained in regulation 107 of the Payment Services Regulations 2017 (SI 2017/752) only, following the deletion of Regulation 16 of SI 2015/1911.

5 Commission Delegated regulation (EU) 2018/72 of 4 October 2017 supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process. *Official Journal* L13 page 1–7: [https://eur-lex.europa.eu/eli/reg\\_del/2018/72/oj](https://eur-lex.europa.eu/eli/reg_del/2018/72/oj)

6 The RTS Regulation as it applies in the UK is available at: <https://www.psr.org.uk/publications/policy-statements/onshoring-eu-regulatory-technical-standards-under-the-interchange-fee-regulation-eu-exit-instrument-and-policy-statement/>

For the instrument adopting the onshored RTS Regulation, see the Technical Standards (Interchange Fee Regulation) (EU Exit) Instrument 2019: <https://psr.org.uk/publications/policy-statements/regulatory-technical-standards-regulation-under-the-uk-interchange-fee-regulation-as-applies-in-the-uk/>

- 1.9** Our proposed amendments to the Guidance also reflect other changes since we first published it in 2016. They include:
- a. **Removing Chapter 4 in its entirety:** This covered the exemption offered to three-party schemes (when they behave like a four-party scheme)<sup>7</sup> if their annual market share of transaction values does not exceed 3%; this exemption expired on 9 December 2018.
  - b. **Removing references to weighted average interchange fees:** The option to allow for these expired on 9 December 2020.
  - c. **Amending references to the rules on surcharging in the UK,** to reflect changes made by the second EU Payment Services Directive (PSD2) and the process of onshoring the relevant legislation.
- 1.10** We propose to **rename** the Guidance to *Guidance on the PSR's approach to monitoring and enforcing compliance with the Interchange Fee Regulation*, to reflect these changes and our new responsibilities.

## The purpose of this consultation

- 1.11** We would like to hear your views on our proposed amendments to the Guidance. The amended Guidance is included in Annex 2. We expect this consultation to be of interest to:
- card scheme operators subject to the UK IFR
  - parties contracting with card schemes and/or processing entities (for example, issuers and acquirers)
  - third-party card payment processors
  - merchants that accept card payments

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<sup>7</sup> According to Article 1(5) of the IFR, three-party payment card schemes are to be considered a four-party payment card scheme when they either licence other payment service providers for the issuance or acquiring of cards, or both, or issue cards with a co-branding partner.

## Next steps

**1.12** We welcome your comments on our proposed amendments to the Guidance by **5pm on 21 May 2021**. We consider this provides sufficient time given:

- the narrow issues for consultation
- the nature of the proposed amendments (which are mostly consequential on legislative change)
- the relatively small number of proposed amendments

**1.13** You can email your comments and responses to us at [IFRcompliance@psr.org.uk](mailto:IFRcompliance@psr.org.uk), or write to as us at:

IFR Guidance review  
Payment Systems Regulator  
12 Endeavour Square  
London  
E20 1JN

**1.14** Please provide your response in a Word document (rather than, or as well as, a PDF).

## Timetable

**1.15** The timetable for this consultation and the published updated guidance is as follows:

- |                         |   |
|-------------------------|---|
| <b>21 May 2021</b>      | Consultation closes.                        |
| <b>May to July 2021</b> | We will assess the responses.               |
| <b>Later in 2021</b>    | We will publish the final updated Guidance. |

## Consultation questions

### Question 1:

Have we correctly identified all relevant amendments to the Guidance required to address the legislative changes resulting from EU exit? If not, please explain why.

### Question 2:

Do you have any comments on our proposed amendments to the Guidance? If so, please set these out.



# Annex 1

## Legislative changes

### Introduction

- 1.1** This annex describes the legislative framework and how it has changed as a consequence of EU exit. It includes details of:
- the retention of EU law and the onshoring that has been done to ensure it operates effectively
  - other relevant changes, including changes in legislation that are unconnected to EU exit

### The legislative framework before EU exit

- 1.2** The EU adopted the EU IFR in April 2015, making provisions for how card schemes, issuers, acquirers and certain other parties must operate in the EEA. This included capping interchange fees for certain card transactions and establishing business rules governing parties' activities.
- 1.3** The UK's Payment Card Interchange Fee Regulations 2015 (PCIFRs)<sup>8</sup> made provision to support the implementation of the EU IFR in the UK. This included appointing authorities to monitor and enforce compliance, and enabling them to penalise non-compliance. The PCIFRs were also the vehicle for the UK to exercise options it had on some of the requirements of the EU IFR, such as the weighted average interchange fee.
- 1.4** The PCIFRs are the source of the PSR's role, responsibilities, and powers with respect to the IFR.

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<sup>8</sup> The Payment Card Interchange Fee Regulations 2015 (SI 2015/1911). Available at: <https://www.legislation.gov.uk/ukSI/2015/1911/contents>

## The European Union (Withdrawal) Act and retained EU legislation

- 1.5** The European Union (Withdrawal) Act 2018<sup>9</sup> (EUWA) repealed the European Communities Act 1972<sup>10</sup> at 11pm on 31 January 2020 (exit day).
- 1.6** The Withdrawal Agreement<sup>11</sup> between the UK and the EU set out the arrangements for the UK's withdrawal from the EU. These included an implementation period, during which EU law continued to apply in the UK after exit day. The European Union (Withdrawal Agreement) Act 2020 inserted saving provisions into EUWA which provided that, in general, EU law would continue to apply in the UK until the end of the implementation period.
- 1.7** The implementation period expired at 11pm on 31 December 2020 (IP completion day). Between exit day and IP completion day, the EU IFR continued to apply in the UK.
- 1.8** EUWA also provided that EU legislation that applied directly or indirectly to the UK immediately before IP completion day would be retained in UK law, as a form of domestic legislation known as 'retained EU legislation'. This included the EU IFR.

## Onshoring the EU IFR

- 1.9** EUWA allows the Government to correct problems arising from EU exit by using statutory instruments and making regulations. This process, generally referred to as 'onshoring', ensures that retained EU legislation operates effectively after IP completion day.
- 1.10** The Interchange Fee Amendment (EU Exit) Regulations 2019<sup>12</sup> (the onshoring instrument) took effect at the end of the implementation period. The onshoring instrument made a number of changes to the EU IFR provisions, as retained under EUWA, to ensure they operate effectively. It also made some changes to the PCIFRs. In particular, these changes:
- a. Reduce the scope of application of the IFR in UK legislation from the European Economic Area (EEA) to the UK. The result of this is that card transactions which take place solely within the UK (where the point of sale, acquirer and the card issuer are located in the UK) continue to be covered by the IFR, but cross-border card payments between the UK and the EEA are no longer within scope.

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9 The European Union (withdrawal) Act 2018, c.16. Available at: <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

10 The European Communities Act 1972, c. 68. Available at: <https://www.legislation.gov.uk/ukpga/1972/68/contents>

11 *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*. See: <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

12 The Interchange Fee Amendment (EU Exit) Regulations 2019 (SI 2019/284). Available at: <https://www.legislation.gov.uk/uksi/2019/284/contents/made>

- b. Amend the PCIFRs, including by removing the concept of a 'competent authority' and removing the PSR and FCA's designations as competent authorities. Despite the removal, both the PSR and FCA retain broadly the same roles and responsibilities in relation to the UK IFR as we did prior to EU exit.<sup>13</sup>
- c. Amend the PCIFRs to remove the transitional relief provisions for three-party schemes (when they behave like a four-party scheme) if their annual market share of transaction values does not exceed 3%.<sup>14</sup>
- d. Transfer the function for making regulatory technical standards regarding the requirements for separation of card schemes and processing entities (Article 7 of the EU IFR). This is transferred from the European Commission to the PSR.

## Onshoring the RTS Regulation

- 1.11** The Regulatory Technical Standards (RTS) Regulation was adopted under Article 7 of the EU IFR. It introduced specific requirements relating to the independence of payment card schemes and processing entities.
- 1.12** In November 2018, we consulted on proposed amendments to the RTS Regulation to onshore it so that it continued to operate effectively after IP completion day. In March 2019, we published a policy statement and made the Technical Standards (Interchange Fee Regulation) (EU Exit) Instrument 2019, which amended the RTS Regulation.

## Other changes (unconnected to EU exit)

### IFR

- 1.13** As part of the onshoring process, we removed the provisions in the IFR and PCIFRs which dealt with the exemption offered to three-party schemes (when they behave like a four-party scheme) if their annual market share of transactions values does not exceed 3%. This exemption expired on 9 December 2018.
- 1.14** In addition, although not removed in the onshoring process, the weighted average interchange fee provisions of Article 3(3) of the IFR expired on 9 December 2020. These allowed for the application of a weighted average interchange fee of no more than the equivalent of 0.2% of the annual average transaction value of all domestic debit card transactions within each payment card scheme.

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13 The FCA's powers in relation to the UK IFR are now contained in regulation 107 of the Payment Services Regulations 2017 (SI 2017/752) only, following the deletion of Regulation 16 of the PCIFRs. The PSR's powers are contained in the PCIFRs (as was the case prior to EU exit).

14 These provisions (Article 1(5) EU IFR and regulation 22 PCIFRs) expired in December 2018.

## Surcharging rules

- 1.15** PSD2 (adopted in 2015) brought new rules around surcharging. In particular, it banned surcharges on consumer credit and debit cards covered by the IFR (i.e. where the issuer and acquirer were based in the EU).
- 1.16** These new rules were brought into force in UK law with effect from 13 January 2018 by amendments to the Consumer Rights (Payment Surcharges) Regulations 2012 (amended by paragraph 12 of Schedule 8 to the Payment Services Regulations 2017).
- 1.17** As part of the onshoring process, the Consumer Rights (Payment Surcharges) Regulations 2012 were amended again by the Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018. The key amendment for the purposes of our Guidance is that the scope of the ban on surcharging was reduced from the EU to the UK only.
- 1.18** The rules on surcharging in the UK now provide that a trader must not charge consumers a fee in addition to the advertised price of a transaction made with:
- a. a non-commercial card for which interchange fees are regulated under the UK IFR
  - b. other non-commercial payment instruments (such as e-money)
- 1.19** For payments made with cards not covered by the UK IFR (i.e. consumer cards where the issuer or acquirer is not based in the UK, and commercial cards), a trader must not charge consumers more than it costs the trader to accept a particular method of payment.

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