Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Payment Card Interchange Fee Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 1911

FINANCIAL SERVICES AND MARKETS

The Payment Card Interchange Fee Regulations 2015

Made - - - -	*16th November 2015*
Laid before Parliament	*17th November 2015*
Coming into force - -	*9th December 2015*

The Treasury are a government department designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972.

F1 S.I. 2012/1759.

F2 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c. 7), **Sch**edule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51) legislation may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1992 (Cm 2183).

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Payment Card Interchange Fee Regulations 2015 and come into force on 9th December 2015.

Interpretation

2.—(1) In these Regulations—

"the 2013 Act" means the Financial Services (Banking Reform) Act 2013 [F3];

"compliance failure" means a failure by a person to comply with—

(a) an obligation, prohibition or restriction imposed by the interchange fee regulation, or

(b) a direction given under regulation 4;

"general direction" has the meaning given in regulation 4(6);

"general guidance" has the meaning given in regulation 13(3);

"the interchange fee regulation" means Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions [F4];

"the Payment Systems Regulator" means the body established under section 40(1) of the 2013 Act; and

"regulated person" means a person on whom an obligation, prohibition or restriction is imposed by any provision of the interchange fee regulation.

(2) Any expression used in these Regulations which is used in the interchange fee regulation has the same meaning as in the interchange fee regulation.

F3 2013 c. 33.
F4 OJ L 123, 19.5.2013, p.1.

PART 2

The Payment Systems Regulator

Designation as a competent authority and functions

3.—(1) The Payment Systems Regulator is responsible in the United Kingdom for all functions of the competent authority provided for in the interchange fee regulation.

(2) The Payment Systems Regulator must maintain arrangements to enable it to—

[[F5](a) determine whether regulated persons comply in the United Kingdom with obligations, prohibitions and restrictions imposed on them by—

(i) the interchange fee regulation, read together with regulations 22 (weighted average interchange fees for domestic debit card transactions) and 23 (exemption from maximum interchange fees for certain three party payment card schemes); or

(ii) a technical standard made under section 97A of the 2013 Act**]**;

(b) enforce compliance in the United Kingdom by regulated persons with those obligations, prohibitions and restrictions.

(3) In paragraph (2) references to regulated persons include reference to regulated persons situated outside the United Kingdom.

(4) In discharging its functions mentioned in paragraph (5), the Payment Systems Regulator must have regard to—

(a) the need to use the resources of the Payment Systems Regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, to the extent that having regard to such factors is appropriate given

the obligations, prohibitions and restrictions imposed by the interchange fee regulation and the responsibility of the Payment Systems Regulator set out in paragraph (1);

(d) the general principle that those who use services provided under payment card schemes should take responsibility for their decisions;

(e) the responsibilities of the senior management of regulated persons in relation to compliance with obligations, prohibitions and restrictions imposed by the interchange fee regulation read together with regulations 22 and 23, or imposed under this Part;

(f) the desirability where appropriate of the Payment Systems Regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different regulated persons;

(g) the desirability in appropriate cases of the Payment Systems Regulator publishing information relating to regulated persons, or requiring such persons to publish information;

(h) the principle that the Payment Systems Regulator should exercise its functions as transparently as possible.

(5) The functions are—

(a) the function of giving general directions under regulation 4 (considered as a whole), [F6]...

(b) functions in relation to giving general guidance under regulation 13 (considered as a whole);

[F7(c) the function of making technical standards under section 97A of the 2013 Act; and

(d) the function of making EU Exit instruments under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018.]

F5 Reg. 3(2)(a) substituted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 1(2), **11(2)(a)(i)**

F6 Word in reg. 3(5)(a) omitted (26.10.2018) by virtue of The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 1(2), **11(2)(b)(i)**

F7 Reg. 3(5)(c)(d) inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 1(2), **11(2)(b)(ii)**

Directions

4.—(1) The Payment Systems Regulator may give a direction in writing to any regulated person.

(2) A direction may be given for the purpose of—

(a) obtaining information about—

(i) compliance with an obligation, prohibition or restriction imposed by the interchange fee regulation read together with regulations 22 and 23, or

(ii) the application of any such obligation, prohibition or restriction to a person;

(b) remedying a failure to comply with an obligation, prohibition or restriction imposed by the interchange fee regulation read together with regulations 22 and 23;

(c) preventing a failure to comply, or continued non-compliance, with such an obligation, prohibition or restriction;

(d) providing redress or compensation to a person who has suffered a loss as a result of a failure to comply with such an obligation, prohibition or restriction.

(3) A direction may require or prohibit the taking of specified action.

(4) A direction given for the purpose mentioned at paragraph (2)(b) or (c) may, in particular, require or prohibit the taking of specified action in relation to the rules, practices, standards or

implementation guidelines of a payment card scheme, or the terms of agreements between regulated persons.

(5) A direction may apply—

(a) in relation to all regulated persons or in relation to every regulated person of a specified description; or

(b) in relation to a specified regulated person or specified regulated persons.

(6) A direction that applies as mentioned in paragraph (5)(a) is referred to in this Part as a "general direction".

(7) The Payment Systems Regulator must publish any general direction.

Publication of compliance failures etc

5. The Payment Systems Regulator may publish details of—

(a) a compliance failure by a regulated person; or

(b) a penalty imposed under regulation 6.

Penalties

6.—(1) The Payment Systems Regulator may require a regulated person to pay a penalty in respect of a compliance failure.

(2) A penalty—

(a) must be paid to the Payment Systems Regulator; and

(b) may be enforced by the Payment Systems Regulator as a debt.

(3) The Payment Systems Regulator must prepare a statement of the principles which it will apply in determining—

(a) whether to impose a penalty, and

(b) the amount of a penalty.

(4) The Payment Systems Regulator must—

(a) publish the statement on its website,

(b) send a copy to the Treasury,

(c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and

(d) in applying the statement to a compliance failure, apply the version in force when the compliance failure occurred.

Warning notices

7. Before publishing details of a compliance failure by a regulated person under regulation 5(a) or imposing a penalty on a regulated person under regulation 6, the Payment Systems Regulator must—

(a) give the person a notice in writing,

(b) give the person at least 21 days to make representations,

(c) consider any representations made, and

(d) as soon as is reasonably practicable, give the person a notice in writing stating whether or not it intends to publish the details or impose the penalty.

Injunctions

8.—(1) If, on the application of the Payment Systems Regulator, the court is satisfied—

(a) that there is a reasonable likelihood that there will be a compliance failure, or

(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Payment Systems Regulator, the court is satisfied—

(a) that there has been a compliance failure by a regulated person, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the regulated person, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Payment Systems Regulator, the court is satisfied—

(a) that there may have been a compliance failure by a regulated person, or

(b) that another person may have been knowingly concerned in a compliance failure,

the court may make an order restraining the regulated person or other person (as the case may be) from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

(4) The jurisdiction conferred by this regulation is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(5) In this regulation—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,

(b) references to remedying a failure include mitigating its effect, and

(c) references to dealing with assets include disposing of them.

Appeals: general

9.—(1) A person who is affected by—

(a) a decision to give a direction under regulation 4 other than a general direction, or

(b) a decision to publish details under regulation 5(a),

may appeal against the decision to the Competition Appeal Tribunal in accordance with regulation 10.

(2) A person who is affected by a decision to impose a penalty under regulation 6 may appeal against the decision to the Competition Appeal Tribunal in accordance with regulation 11.

Appeals against directions and publication of compliance failures

10.—(1) This regulation applies where a person is appealing to the Competition Appeal Tribunal ("the Tribunal") against a decision to give a direction under regulation 4 or to publish details under regulation 5(a).

(2) The means of making an appeal is by sending the Tribunal a notice of appeal in accordance with Tribunal rules.

(3) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in those rules.