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## STATUTORY INSTRUMENTS

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# 2015 No. 1911

## The Payment Card Interchange Fee Regulations 2015

### PART 2

#### The Payment Systems Regulator

##### [<sup>F1</sup>Functions]

3.—<sup>F2</sup>(1) .....

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

[<sup>F3</sup>(a) determine whether regulated persons comply <sup>F4</sup>... 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 <sup>F5</sup>... 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;

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- (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), <sup>F6</sup>...
  - (b) functions in relation to giving general guidance under regulation 13 (considered as a whole);
  - [<sup>F7</sup>(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.]

- F1** Reg. 3 heading substituted (31.12.2020) by [The Interchange Fee \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/284), regs. 1(2), **2(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Reg. 3(1) omitted (31.12.2020) by virtue of [The Interchange Fee \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/284), regs. 1(2), **2(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** 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)**
- F4** Words in reg. 3(2)(a) omitted (31.12.2020) by virtue of [The Interchange Fee \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/284), regs. 1(2), **2(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 3(2)(b) omitted (31.12.2020) by virtue of [The Interchange Fee \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/284), regs. 1(2), **2(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- 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.

(4) In determining an appeal made in accordance with this regulation, the Tribunal must apply the same principles as would be applied by a court on an application for judicial review.

(5) The Tribunal must either—

(a) dismiss the appeal, or

(b) quash the whole or part of the decision to which the appeal relates.

(6) If the Tribunal quashes the whole or part of a decision, it may refer the matter back to the Payment Systems Regulator with a direction to reconsider and make a new decision in accordance with its ruling.

(7) The Tribunal may not direct the Payment Systems Regulator to take any action which it would not otherwise have the power to take in relation to the decision.

(8) In this regulation and regulation 11 “Tribunal rules” means rules under section 15 of the Enterprise Act 2002 <sup>F8</sup>.

**F8** 2002 c. 40. Section 15 was amended by paragraph 20 of Schedule 8 to the [Consumer Rights Act 2015](#) (c. 15).

### Appeals in relation to penalties

**11.**—(1) This regulation applies where a person is appealing to the Competition Appeal Tribunal (“the Tribunal”) against a decision to impose a penalty under regulation 6.

(2) The person may appeal against—

(a) the imposition of the penalty,

(b) the amount of the penalty, or

(c) any date by which the penalty, or any part of it, is required to be paid.

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

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

(5) The Tribunal may do any of the following—

(a) uphold the penalty;

(b) set aside the penalty;

(c) substitute for the penalty a penalty of an amount decided by the Tribunal;

(d) vary any date by which the penalty, or any part of it, is required to be paid.

(6) If an appeal is made in accordance with this regulation, the penalty is not required to be paid until the appeal has been determined.

(7) Paragraphs (2), (5) and (6) do not restrict the power to make Tribunal rules; and those paragraphs are subject to Tribunal rules.

(8) Except as provided by this regulation, the validity of the penalty may not be questioned by any legal proceedings whatever.

(9) In the case of an appeal made in accordance with this regulation, a decision of the Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Payment Systems Regulator.

### **Payees' complaints and dispute resolution**

**12.—**(1) This regulation applies where a payee makes an application to the Payment Systems Regulator seeking resolution of a dispute between the payee and the payee's payment service provider arising under the interchange fee regulation read together with regulations 22 and 23.

(2) If the payee's complaint appears to the Payment Systems Regulator to be justified, the Payment Systems Regulator—

- (a) must consider whether to exercise its powers under these Regulations in relation to any suspected compliance failure by the payment service provider; and
- (b) may take any other steps it considers appropriate for the purpose of seeking resolution of the dispute.

### **Guidance**

**13.—**(1) The Payment Systems Regulator may give guidance consisting of such information and advice as it considers appropriate—

- (a) with respect to the operation of specified provisions of the interchange fee regulation and these Regulations;
- (b) with respect to any other matter relating to its functions under the interchange fee regulation and these Regulations;
- (c) with respect to any other matters about which it appears to the Payment Systems Regulator to be desirable to give information or advice.

(2) Guidance given by the Payment Systems Regulator under this regulation—

- (a) may be given to persons generally or to a class of persons;
- (b) may be intended to have continuing effect, and
- (c) may be given in writing or other legible form.

(3) Guidance which is given as described in paragraph (2)(a), (b) and (c) is referred to in this Part as “general guidance”.

(4) The Payment Systems Regulator may give financial or other assistance to persons giving information or advice of a kind which the Payment Systems Regulator could give under this regulation.

(5) The Payment Systems Regulator may—

- (a) publish its guidance,
- (b) offer copies of its published guidance for sale at a reasonable price, and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

### **Information and investigation**

**14.—**(1) Sections 81 to 93 of the 2013 Act (information and investigation powers and disclosure of information) apply for the purposes of the Payment Systems Regulator's functions under the interchange fee regulation and these Regulations as if—

- (a) references to Part 5 of the 2013 Act were references to the interchange fee regulation and these Regulations;
- (b) references to a participant in a regulated payment system were references to a regulated person and references to participation in a payment system were references to compliance with the interchange fee regulation read together with regulations 22 and 23;

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- (c) references to a compliance failure were references to a compliance failure as defined in regulation 2(1);
  - (d) in section 81 (power to obtain information or documents), subsection (1)(a) were omitted;
  - (e) in section 83 (appointment of persons to conduct investigations), subsection (1) were omitted;
  - (f) in section 90 (enforcement of information and investigation powers)—
    - (i) in subsection (7)(a)(i) for “[<sup>F9</sup>the general limit in a magistrates’ court] (or 6 months, if the offence was committed before [<sup>F10</sup>2nd May 2022])” there were substituted “ 3 months ”;
    - (ii) in subsection (7)(a)(iii) for “6 months” there were substituted “ 3 months ”; and
    - (iii) in subsection (8)(a) for “51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003)” there were substituted “ 3 months ”;
  - (g) in section 91 (restrictions on disclosure of confidential information), subsection (6) were omitted; and
  - (h) in section 93 (offences relating to disclosure of confidential information), in subsection (4) (a) for “51 weeks (or 3 months, if the offence was committed before the commencement of section 280(2) of the Criminal Justice Act 2003)” there were substituted “ 3 months ”.
- (2) The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 <sup>F11</sup> (“the 2014 Regulations”) apply for the purposes of the Payment Systems Regulator's functions under the interchange fee regulation and these Regulations as if—
- (a) the reference in regulation 5(3)(a) of the 2014 Regulations (disclosure for the purposes of certain other proceedings) to Part 5 of the 2013 Act were a reference to the interchange fee regulation and these Regulations; and
  - (b) the following entry were included in the table in the Schedule to the 2014 Regulations (persons and functions in respect of which disclosure is permitted)—

“A general enforcer as defined in section 213(1) of the Enterprise Act 2002	Its functions under Part 8 of the Enterprise Act 2002 in so far as they relate to Article 10(4) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29th April 2015 on interchange fees for card-based payment transactions, and under regulation 20 of the Payment Card Interchange Fee Regulations 2015.”.
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- F9** Words in [reg. 14\(1\)\(f\)\(i\)](#) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates’ Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(2), [Sch. Pt. 2](#)
- F10** Words in [reg. 14\(1\)\(f\)\(i\)](#) substituted (28.4.2022) by [The Criminal Justice Act 2003 \(Commencement No. 33\) and Sentencing Act 2020 \(Commencement No. 2\) Regulations 2022 \(S.I. 2022/500\)](#), regs. 1(2), 5(2), [Sch. Pt. 2](#)
- F11** [S.I. 2014/882](#).

## Application of other provisions of the 2013 Act

**15.**—(1) For the purposes of these Regulations section 40(3) and (4) of the 2013 Act (Financial Conduct Authority to ensure capability of Payment Systems Regulator) applies as if the reference in

section 40(3) of that Act to the functions conferred on the Payment Systems Regulator by or under Part 5 of that Act were a reference to the functions of the Payment Systems Regulator under the interchange fee regulation and these Regulations.

(2) For the purposes of these Regulations section 104 of the 2013 Act (consultation in relation to generally applicable requirements) applies as if—

(a) in subsection (1)—

(i) the reference in paragraph (a) to a general direction under section 54 of that Act were a reference to a general direction under regulation 4;

(ii) paragraph (b) were omitted;

(b) in subsection (3)(c), the reference to the Payment Systems Regulator's duties under section 49 were a reference to the Payment Systems Regulator's duties under regulation 3(2) and (4) (duties to maintain arrangements for supervision and compliance and to have regard to regulatory principles); and

(c) in subsection (10), the reference to regulated payment systems were a reference to regulated persons.

(3) For the purposes of these Regulations paragraphs 5, 7 and 9 to 14 of Schedule 4 to the 2013 Act (the Payment Systems Regulator) apply as if—

(a) references to the functions of the Payment Systems Regulator by or under Part 5 of the 2013 Act were references to the functions of the Payment Systems Regulator under the interchange fee regulation and these Regulations;

(b) in paragraph 5 of that Schedule (arrangements for discharging functions)—

(i) in sub-paragraph (3), the reference to general directions under section 54 of the 2013 Act were a reference to general directions under regulation 4;

(ii) sub-paragraph (3)(b) were omitted;

(iii) in sub-paragraph (4), the reference to general guidance were a reference to general guidance under regulation 13;

(c) in paragraph 7 of that Schedule (annual report), sub-paragraph (2)(b) were omitted;

(d) in paragraph 9 (funding) of that Schedule, in sub-paragraph (1) the reference to participants in regulated payment systems were a reference to regulated persons;

(e) in paragraph 10 of that Schedule (penalty receipts)—

(i) references to penalties imposed under section 73 of the 2013 Act were references to penalties imposed under regulation 6;

(ii) in sub-paragraph (4)—

(aa) in paragraph (a) the reference to the Payment Systems Regulator's powers under sections 72 to 75 of the 2013 Act were a reference to the Payment Systems Regulator's powers under regulations 5 to 8;

(bb) paragraph (b) were omitted;

(cc) in paragraphs (c) and (d) the reference to relevant offences were to offences under Part 5 of the 2013 Act as applied by regulation 14; and

(iii) sub-paragraph (5) were omitted; and

(f) in paragraph 11 of that Schedule (penalty receipts)—

(i) in sub-paragraph (1), the reference to penalties imposed under section 73 of the 2013 Act were a reference to penalties imposed under regulation 6; and

(ii) in sub-paragraphs (1) and (2), the references to participants in regulated payment systems were references to regulated persons.



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**Changes and effects yet to be applied to :**

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(1A) inserted by [S.I. 2023/790 reg. 3\(2\)\(g\)](#)
- reg. 3(2)(a)(iii) and word inserted by [S.I. 2023/790 reg. 3\(3\)\(a\)\(ii\)](#)
- reg. 4A inserted by [S.I. 2023/790 reg. 3\(5\)](#)