

2023 No. 790

FINANCIAL SERVICES AND MARKETS

**The Electronic Money, Payment Card Interchange Fee and
Payment Services (Amendment) Regulations 2023**

Made - - - - 11th July 2023

Laid before Parliament 12th July 2023

Coming into force in accordance with regulation 1(2) and (3)

The Treasury, in exercise of the powers conferred by sections 3 and 84(2) of the Financial Services and Markets Act 2023(a) (“the Act”), make the following Regulations.

The Treasury has consulted the regulators as required by section 3(6) of the Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023.

(2) Subject to paragraph (3), these Regulations come into force as follows—

- (a) regulations 1, 2, 4(1), (2) and (5) on 18th September 2023;
- (b) regulations 3 and 4(3) and (4) on 1st January 2024.

(3) The following provisions come into force on the day on which section 27 of the Financial Services and Markets Act 2023 comes into force so far as it relates to the need to contribute towards achieving compliance by the Secretary of State with section 5 of the Environment Act 2021—

- (a) regulation 2(2)(a), so far as it inserts sub-paragraph (ca)(ii) into regulation 47(2) of the Electronic Money Regulations 2011(b);
- (b) regulation 3(3)(b), so far as it inserts paragraph (ii) into regulation 3(4)(c) of the Payment Card Interchange Fee Regulations 2015(c), and
- (c) regulation 4(2)(a), so far as it inserts paragraph (ii) into regulation 106(3)(c) of the Payment Services Regulations(d).

(4) They extend to England and Wales, Scotland and Northern Ireland.

Amendments to the Electronic Money Regulations 2011

2.—(1) The Electronic Money Regulations 2011 are amended as follows.

(a) 2023 c. 29.
(b) S.I. 2011/99. Paragraph 2A was inserted into Schedule 3 by S.I. 2017/752.
(c) S.I. 2015/1911.
(d) S.I. 2017/752.

(2) In regulation 47 (functions of the authority)—

(a) in paragraph (2), after sub-paragraph (c), insert—

“(ca) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with—

(i) section 1 (target for 2050) of the Climate Change Act 2008(a), and

(ii) section 5 (environmental targets: effect) of the Environment Act 2021(b),

where the Authority considers the exercise of its functions to be relevant to the making of such a contribution;”;

(b) after paragraph (2), insert—

“(3) The Treasury may at any time by notice in writing to the Authority make recommendations to the Authority about aspects of the economic policy of His Majesty’s Government to which the Authority should have regard when considering the application of the principles in paragraph (2).

(4) Section 1JA of the 2000 Act(c) applies in relation to any recommendation made under paragraph (3) as if—

(a) that recommendation were made under section 1JA(1)(d);

(b) the reference in subsection (1)(d) to “the regulatory principles in section 3B” were a reference to the principles set out in regulation 47(2) of these Regulations.”.

(3) In Schedule 3 (application and modification of legislation)—

(a) in paragraph 2A(d)—

(i) in sub-paragraph (1), omit the remaining paragraph (c)(e);

(ii) after sub-paragraph (1), insert—

“(1A) Section 137B(f) of the 2000 Act (FCA general rules: clients’ money, right to rescind etc) applies as if—

(a) references to authorised persons were references to authorised electronic money institutions and small electronic money institutions;

(b) after subsection (1) there were inserted—

“(1A) Rules relating to the safeguarding of relevant assets held by an authorised electronic money institution, a small electronic money institution or a relevant credit union (“a relevant institution”) may—

(a) make any provision in relation to those relevant assets which might be made under subsection (1) in relation to clients’ money;

(b) treat two or more relevant assets as being part of a single asset pool, and make provision for the distribution of assets in that pool;

(c) authorise the retention by a relevant institution of income or capital gains accruing in relation to relevant assets;

(d) make provision as to the distribution of such income or capital gains which are not to be retained by the relevant institution.”;

(c) in subsection (2) the references to “clients’ money” and “money” were read as including a reference to relevant assets;

(a) 2008 c. 27. Section 1 was amended by S.I. 2019/1056.

(b) 2021 c. 30.

(c) 2000 c. 8. Section 1JA was inserted by section 19 of the Bank of England and Financial Services Act 2016 (c. 14).

(d) Paragraph 2A was inserted by S.I. 2017/752.

(e) In paragraph 2A as originally inserted there were two paragraphs numbered (c) in sub-paragraph (1). The first paragraph (c) was omitted by S.I. 2018/1201.

(f) 2000 c. 8. Section 137B was substituted, together with the rest of Part 9A (sections 137A to 141A), for sections 138 to 164 by the Financial Services Act 2012 (c. 21), section 24(1).

- (d) after subsection (3), there were inserted—
- “(3A) “Relevant assets” means assets held by a relevant institution to satisfy its obligations to safeguard funds received—
- (a) in exchange for electronic money that has been issued, or
 - (b) where no electronic money has been issued—
 - (i) from, or for the benefit of, a payment service user for the execution of a payment transaction, or
 - (ii) from a payment service provider for the execution of a payment transaction on behalf of a payment service user,
- including proceeds derived from the realisation of such assets.
- (3B) Assets which may be “relevant assets” include—
- (a) money;
 - (b) insurance policies, including rights arising under those policies;
 - (c) guarantees, including rights arising under those guarantees;
 - (d) other investments, whether or not specified by the Treasury under section 22 of the 2000 Act.
- (3C) A “relevant credit union” means a credit union which issues electronic money.
- (3D) In paragraph (1A)(b), “asset pool” means a collection of assets collectively owned by those persons whose funds the relevant institution is required to safeguard, and in which the relevant institution may also have an interest.”.
- (1B) Section 137P (control of information rules) of the 2000 Act applies as if—
- (a) references to authorised persons were references to authorised electronic money institutions and small electronic money institutions;
 - (b) the reference to “Either regulator” were read as a reference to the FCA.”;
- (iii) in sub-paragraph (2)—
- (aa) for “paragraph (1)” substitute “sub-paragraphs (1), (1A) or (1B)”;
 - (bb) for “section 137A” substitute “sections 137A, 137B and 137P”;
 - (cc) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
- (iv) after sub-paragraph (2), insert—
- “(2A) Section 138C (evidential provisions) applies as if in that section—
- (a) in subsection (1) “by other provisions of this Act” were read as “by or under the Electronic Money Regulations 2011”;
 - (b) references to “either regulator”, “a regulator”, “that regulator” or to “the regulator making the rule” were read as references to the FCA.”;
- (v) for sub-paragraph (3), substitute—
- “(3) Section 138D (actions for damages) applies as if in that section—
- (a) subsection (1) were omitted;
 - (b) in subsection (2), the reference to “an authorised person” were a reference to “an authorised payment institution, a small payment institution, a registered account information service provider or an electronic money institution”;
 - (c) subsection (6) were omitted and “private person” has the meaning given in regulation 72(3) of these Regulations (right to bring actions).”;
- (b) in paragraph 5, for sub-paragraph (ac) substitute—
- “(ac) in section 340 (appointment)—
- (i) for references to the “regulator making the rules” substitute “FCA”;

- (ii) for references to “an authorised person” substitute “an electronic money institution or a person required by regulation 3B of the Electronic Money Regulations 2011 to provide an audit opinion to the FCA”;
- (iii) omit subsections (3A), (5A) and (8)(b);
- (iv) in subsection (5), omit “(3A) or”;

Amendments to the Payment Card Interchange Fee Regulations 2015

3.—(1) The Payment Card Interchange Fee Regulations 2015(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2013 Act” insert—

““card-based payment transaction” means a service based on a payment card scheme’s infrastructure and business rules to make a payment transaction by means of any card, telecommunication, digital or IT device or software if this results in a debit or a credit card transaction, but does not include transactions based on other kinds of payment services;

“co-badging” means the inclusion of two or more payment brands or payment applications of the same brand on the same card-based payment instrument;”;

(b) in paragraph (b) of the definition of “compliance failure”, at the end insert “or 4A”;

(c) in the definition of “general direction” at the end, insert “or 4A(8)”;

(d) after the definition of “general guidance” insert—

““interchange fee” means a fee paid for each transaction directly or indirectly (including fees paid through a third party) between the issuer and the acquirer involved in a card-based payment transaction, and includes the net compensation or other agreed remuneration;”;

(e) after the definition of “the interchange fee regulation”, insert—

““payee” means a person who is the intended recipient of funds which have been the subject of a payment transaction;

“payer” means a person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions, including a specific account for electronic money as defined in regulation 2(1) of the Electronic Money Regulations 2011(b);

“payment application” means computer software or equivalent loaded on a device enabling card-based payment transactions to be initiated and allowing the payer to issue payment orders;

“payment brand” means any material or digital name, term, sign, symbol or combination thereof, capable of denoting under which payment card scheme card-based payment transactions are carried out;

“payment card” means a category of payment instrument that enables the payer to initiate a debit or credit card transaction;

“payment card scheme” means a single set of rules, practices, standards and/or implementation guidelines for the execution of card-based payment transactions and which is separated from any infrastructure or payment system that supports its operation, and includes any specific decision-making body, organisation or entity accountable for the functioning of the scheme;

(a) S.I. 2015/1911.

(b) S.I. 2011/99.

“payment instrument” means any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order;

“payment order” means any instruction by a payer to its payment service provider requesting the execution of a payment transaction;

“payment service provider” has the meaning given in regulation 2(1) of the Payment Services Regulations 2017(a);

“payment services” has the meaning given in regulation 2 of the Payment Services Regulations 2017;

“payment system” has the meaning given in regulation 2 of the Payment Services Regulations 2017;

“payment transaction” means an action, initiated by the payer or on its behalf by the payee of transferring funds, irrespective of any underlying obligation between the payer and the payee;

“processing” means the performance of payment transaction processing services in terms of the actions required for the handling of a payment instruction between the acquirer and the issuer;

“processing entity” means any person providing payment transaction processing services;”.

(f) for the definition of “regulated person” substitute—

““regulated person” means a person—

(a) on whom an obligation, prohibition or restriction is imposed by any provision of the interchange fee regulation, or

(b) who is subject to a direction under regulation 4A(1).”;

(g) after paragraph (1), insert—

“(1A) For the purposes of paragraph (1)—

“acquirer” means 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;

“credit card transaction” means a card-based payment transaction where the amount of the transaction is debited in full or in part, with or without interest, on a date agreed with the payer, under the terms of a prearranged credit facility;

“debit card transaction” means a card-based payment transaction that is not a credit card transaction, and which includes a transaction using a prepaid card;

“issuer” means a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s card-based payment transactions;

“net compensation” means the total net amount of payments, rebates or incentives received by an issuer from the payment card scheme, the acquirer or any other intermediary in relation to card-based payment transactions or related activities.”.

(3) In regulation 3 (functions of the Payment Systems Regulator)(b)—

(a) in paragraph (2)—

(i) at the end of sub-paragraph (a)(i), omit “or”;

(ii) at the end of sub-paragraph (a)(ii), insert—

“or

(iii) a direction given under regulation 4A;”;

(a) S.I. 2017/752. The definition of “payment service provider” was amended by S.I. 2018/1201.

(b) Paragraph (2) of regulation 3 was substituted by S.I. 2018/1115, and amended by S.I. 2019/284.

(b) for paragraph (4)(c), substitute—

“(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with—

(i) section 1 (target for 2050) of the Climate Change Act 2008, and

(ii) section 5 (environmental targets: effect) of the Environment Act 2021,

where the Payment Systems Regulator considers the exercise of its functions to be relevant to the making of such a contribution.”;

(c) in paragraph (5)(a), for “regulation 4” to the end, substitute “regulation 4 and 4A (in each case considered as a whole)”.

(4) In regulation 4(2) (directions), in paragraph (a)(i) and (b), in each case, after “and 23” insert “or by a direction given under regulation 4A”.

(5) After regulation 4 (directions), insert—

“Directions: payment card schemes

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

(a) accountable for the functioning of a payment card scheme;

(b) an operator of a payment card scheme;

(c) a payment service provider;

(d) a processing entity;

(e) a technical service provider providing services in relation to a payment card scheme.

(2) A direction under paragraph (1) may be given in relation to—

(a) the imposition of interchange fees by a payment service provider;

(b) the information to be provided in relation to such fees;

(c) the operations, rules and practices of a person referred to in paragraph (1), including the information which must be provided by that person to specified people and in specified circumstances;

(d) the terms on which payments services are provided in relation to payment card schemes or card-based payment transactions or fees may be charged for those services.

(3) A direction may only be given under paragraph (2)(c) or (d) for the following purposes—

(a) to ensure the separation of a payment card scheme and processing entities;

(b) to regulate the use by a payment card scheme of terms, conditions, practices, rules or restrictions which may affect the cost and ease of—

(i) payees accepting payments by payment card, and

(ii) payers making payments by payment card;

(c) to ensure the interoperability of systems in relation to processing entities;

(d) to ensure transparency as to the fees charged and the terms on which an individual card-based payment transaction is made;

(e) to prevent the use of territorial restrictions within the United Kingdom or rules having an equivalent effect in—

(i) licensing agreements, or

(ii) the rules of a payment card scheme for issuing payment cards or acquiring card-based payment transactions; or

- (f) to support the co-badging of payment brands or payment applications.
- (4) A direction under paragraph (1) may—
 - (a) require or prohibit the taking of specified action in relation to any payment card scheme;
 - (b) set standards to be met—
 - (i) by any person referred to in paragraph (1), or
 - (ii) by or in relation to any card-based payment transaction or payment card scheme.
- (5) A direction setting standards under paragraph (4)(b) may require—
 - (a) the establishment of rules relating to—
 - (i) the operation of a payment card scheme;
 - (ii) the provision of payment services, payment transaction processing services or technical services in relation to a payment card scheme;
 - (iii) licensing agreements entered into in relation to a payment card scheme;
 - (b) the amendment of the rules in a specified way or to achieve a specified purpose;
 - (c) the notification to the Payment Systems Regulator of any proposed change to the rules;
 - (d) the approval of the Payment Systems Regulator for any amendment to the rules.
- (6) A requirement imposed under paragraph (5)(c) or (d) may be general or specific.
- (7) A direction may apply in relation to—
 - (a) a specified person,
 - (b) all persons referred to in one or more sub-paragraphs of paragraph (1), or
 - (c) to a specified class of such persons.
- (8) A direction that applies as mentioned in paragraph (7)(b) or (c) is referred to in this Part as a “general direction”.
- (9) The Payment Systems Regulator must publish any general direction.”.
- (6) In regulation 9(1)(a) (appeals: general), after “regulation 4” insert “or 4A”.
- (7) In regulation 10(1) (appeals against directions and publication of compliance failures), after “regulation 4” insert “or 4A”.
- (8) In regulation 12(1) (payees’ complaints and dispute resolution), for “regulations 22 and 23” substitute “regulation 23 and any direction given under regulation 4A”.
- (9) In regulation 14(1)(b) (information and investigation), for “regulations 22 and 23” substitute “regulation 23 and with a direction given under regulation 4A”.
- (10) In regulation 15 (application of other provisions of the 2013 Act), in paragraph (2)(a)(i), and in paragraph (3)(b)(i), in each case at the end insert “or 4A”.

Amendments to the Payment Services Regulations 2017

- 4.—**(1) The Payment Services Regulations 2017(a) are amended as follows.
- (2) In regulation 106 (functions of the FCA)—
 - (a) in paragraph (3), in sub-paragraph (c), at the end insert—
 - “, including in a way consistent with contributing towards achieving compliance by the Secretary of State with—
 - (i) section 1 (target for 2050) of the Climate Change Act 2008, and

(a) S.I. 2017/752.

(ii) section 5 (environmental targets: effect) of the Environment Act 2021, where the FCA considers the exercise of its functions to be relevant to the making of such a contribution;”;

(b) after paragraph (3), insert—

“(4) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of His Majesty’s Government to which the FCA should have regard when considering the application of the principles in paragraph (3).

(5) Section 1JA of the 2000 Act applies in relation to any recommendation made under paragraph (4) as if—

(a) that recommendation were made under section 1JA(1)(d);

(b) the reference in subsection (1)(d) to the regulatory principles in section 3B were a reference to the principles set out in regulation 106(3) of these Regulations.”.

(3) In regulation 123 (interpretation of Part 10)—

(a) in paragraph (b) of the definition of “compliance failure”, for “regulation 125” substitute “regulation 125(1)”;

(b) for the definition of “qualifying requirement” substitute—

““qualifying requirement” means an obligation, prohibition or restriction imposed by—

(a) regulation 61 (information on ATM withdrawal charges),

(b) Part 8 (access to payment systems and bank accounts), with the exception of the obligation imposed on the FCA by regulation 105(5) (access to bank accounts), or

(c) a direction given by the Payment Systems Regulator under regulation 125(2A);”.

(4) In regulation 125 (directions)(a)—

(a) after paragraph (2), insert—

“(2A) The Payment Services Regulator may give a direction in writing to a provider of cash withdrawal services falling within paragraph 2(o) of Schedule 1 for the purpose of ensuring that a customer using cash withdrawal services is provided with information including any applicable withdrawal charges, and, where a currency conversion service is offered, the exchange rate to be used for converting a payment transaction—

(a) before the withdrawal, and

(b) on receipt of the cash.”;

(b) for paragraph (3), substitute—

“(3) A direction may—

(a) require or prohibit the taking of specified action,

(b) when given under paragraph (2A), set standards to be met by a provider of cash withdrawal services.”;

(c) after paragraph (4), insert—

“(4A) A direction setting standards under paragraph (3)(b) may impose rules on all providers of cash withdrawal services, or on such providers of a specified description.”.

(5) In Schedule 6 (application and modification of legislation), in Part 1 (application and modification of the 2000 Act)—

(a) in paragraph 3—

(i) in sub-paragraph (1), omit paragraph (d);

(ii) after sub-paragraph (1), insert—

(a) S.I. 2017/752, amended by S.I. 2018/1201.

“(1A) Section 137B(a) of the 2000 Act (FCA general rules: clients’ money, right to rescind etc) applies as if—

(a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers, electronic money institutions and relevant credit unions (“relevant institutions”);

(b) after subsection (1) there were inserted—

“(1A) Rules relating to the safeguarding of relevant assets held by a relevant institution may—

(a) make any provision in relation to those relevant assets which might be made under subsection (1) in relation to clients’ money;

(b) treat two or more relevant assets as being part of a single asset pool, and make provision for the distribution of assets in that pool;

(c) authorise the retention by a relevant institution of income or capital gains accruing in relation to relevant assets;

(d) make provision as to the distribution of such income or capital gains which are not to be retained by the relevant institution.”;

(c) in subsection (2) the references to “clients’ money” and “money” were read as including a reference to relevant assets;

(d) after subsection (3), there were inserted—

“(3A) “Relevant assets” means assets held by a relevant institution to satisfy its obligations to safeguard funds received—

(a) in exchange for electronic money that has been issued, or

(b) where no electronic money has been issued—

(i) from, or for the benefit of, a payment service user for the execution of a payment transaction, or

(ii) from a payment service provider for the execution of a payment transaction on behalf of a payment service user,

including proceeds derived from the realisation of such assets.

(3B) In subsection (3A), “assets” include—

(a) money;

(b) insurance policies, including rights arising under those policies;

(c) guarantees, including rights arising under those guarantees;

(d) other investments, whether or not specified by the Treasury under section 22 of the 2000 Act.

(3C) “Relevant credit union” means a credit union which issues electronic money.

(3D) In paragraph (1A)(b), “asset pool” means a collection of assets collectively owned by those persons whose funds the relevant institution is required to safeguard, and in which the relevant institution may also have an interest.”.

(1B) Section 137P (control of information rules) of the 2000 Act applies as if—

(a) references to authorised persons were references to authorised payment institutions, small payment institutions, registered account information service providers and electronic money institutions;

(b) the reference to “Either regulator” were read as a reference to the FCA.”;

(iii) in sub-paragraph (2)—

(a) 2000 c. 8. Section 137B was substituted, together with the rest of Part 9A, for sections 138 to 164 by the Financial Services Act 2012 (c. 21), section 24(1).

- (aa) after “sub-paragraph (1)” insert “, (1A) or (1B)”;
- (bb) for “section 137A” substitute “sections 137A, 137B and 137P”;
- (cc) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
- (iv) after sub-paragraph (2), insert—
 - “(2A) Section 138C (evidential provisions) applies as if in that section—
 - (a) in subsection (1) “by other provisions of this Act” were read as “by or under the Payment Services Regulations 2017”;
 - (b) references to “either regulator”, “a regulator”, “that regulator” or to “the regulator making the rule” were read as references to the FCA”;
 - (v) for sub-paragraph (3), substitute—
 - “(3) Section 138D (actions for damages) applies as if in that section—
 - (a) subsection (1) were omitted;
 - (b) in subsection (2), the reference to “an authorised person” were a reference to “an authorised payment institution, a small payment institution, a registered account information service provider or an electronic money institution”;
 - (c) subsection (6) were omitted and “private person” has the meaning given in regulation 148(3) of these Regulations (actions for breach of requirement).”;
 - (b) in paragraph 7—
 - (i) renumber the existing text as sub-paragraph (2);
 - (ii) before sub-paragraph (2), as so renumbered, insert—
 - “(1) Section 340 (appointment of auditors and actuaries) of the 2000 Act(a) applies with the following modifications—
 - (a) references to “the appropriate regulator” and to the “regulator making the rules” are to be read as references to the FCA;
 - (b) references to an authorised person are to be read as references to an authorised payment institution or a person required by regulation 39(3) of the Payment Services Regulations 2017 to provide an audit opinion to the FCA;
 - (c) subsections (3A), (5A) and (8)(b) were omitted;
 - (d) in subsection (5), “(3A) or” were omitted.”.

Steve Double
Amanda Solloway

11th July 2023

Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electronic Money Regulations 2011 (“the 2011 Regulations”) and the Payment Services Regulations 2017 (“the 2017 Regulations”) to remove a limitation on the FCA’s power to make rules in relation to authorised electronic money institutions, small electronic money institutions, authorised payment institutions, small payment institutions, and registered account information service providers.

They also extend the FCA’s existing powers to make rules for authorised persons in relation to client money, the control of information, and the appointment of auditors so that such rules may

(a) Subsection (3A) was substituted, and subsection (5A) inserted, by paragraph 3 of Schedule 13 to the Financial Services Act 2012.

also be made in relation to these institutions, apply the Treasury's power to make recommendations to the FCA in connection with its general duties to the FCA's duties in relation to electronic money institutions and payment services, and require the FCA to have regard to the net zero emissions target as one of the regulatory principles applying to the exercise of its functions under the 2011 Regulations and the 2017 Regulations.

They also amend the Payment Services Regulations 2017 to give the Payment Services Regulator an enhanced power to issue directions to providers of cash withdrawal services, and amend the Payment Card Interchange Fee Regulations 2015 to give the Payment Systems Regulator power to issue directions to operators of payment systems and to those providing services to payment systems.

An impact assessment has not been produced for these Regulations, as no, or no significant, impact on the private, voluntary or public sector is foreseen.

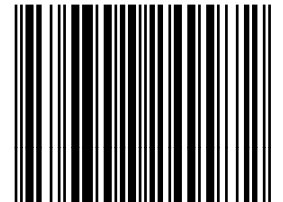
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