

Interchange Fee Regulation – Next Steps

This note sets out the latest information that we have regarding the way in which the Interchange Fee Regulation will be implemented in the UK, and the practical implementation issues for retailers to address.

Introduction

The European Interchange Fee Regulation (IFR) came into effect in the UK on 8 June 2015. The IFR requirements only apply to EEA card transactions.

The IFR requirements can be split into two phases. Phase 1 introduces caps on interchange fees for certain card transaction, which come into force on 9 December 2015. The Payment Systems Regulator (PSR) is the main competent authority for monitoring and enforcing the IFR in the UK, and has published provisional guidance on which card transactions the price caps will apply to.¹

Phase 2 introduces wider requirements that come into force on 9 June 2016. The PSR will consult on these requirements in early 2016.

This note explains the IFR Phase 1 requirements for the UK, as determined by HM Treasury and the PSR. It also provides some interpretation of the IFR requirements for Phase 2. Acquirers would like to be in a position to provide concrete guidance to merchants about all of the IFR requirements but will be unable to provide that comprehensive view until there is regulatory certainty.

UK implementation

Following the entry into force of the European Interchange Fee Regulation (IFR) on June 8 2015, the Treasury (HMT) has consulted on how best to implement certain aspects of the IFR in the UK (as the IFR gives a degree of discretion to Member States in a few areas). On 8 October 2015, HMT published a response² to the consultation on this issue, clarifying the position on Phase 1 of the IFR, and making clear the different bodies that will be responsible for ensuring compliance with the IFR.

¹ See <https://www.psr.org.uk/psr-publications/consultations/application-of-the-IFR-in-the-uk>. The PSR is consulting on this guidance, with responses due on 29 January 2016.

² See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466783/Interchange_fee_regulation_response.pdf.

As the IFR imposes requirements on a range of parties, different regulators will be involved in monitoring and ensuring compliance. These include:

- The Payment Systems Regulator (PSR), which will be the overall competent authority for overseeing the IFR, and will monitor the implementation of the credit and debit card interchange caps by the card payment industry.³
- The Financial Conduct Authority (FCA), which will have responsibility for those Articles dealing with co-badging and choice of application, unblending of merchant service charges, restrictions on honour all cards rules, identification of payment instruments and the information that requires to be provided to payees. These are provisions of the IFR that are similar to those in the UK Payment Services Regulations 2009 where the FCA already acts as the supervisor of regulated institutions.
- The Trading Standards Authority (TSA) and the Competition Markets Authority (CMA), which will oversee the requirements applicable to retailers.⁴

Continuing European oversight

The IFR portfolio has moved from DG Financial Services to DG Competition. DG Competition has an objective to ensure that the IFR is implemented consistently across Member States and to help resolve any interpretational issues. Meetings are being held with a number of the newly appointed competent authorities in an effort to achieve this.

The European Commission is required to review the impact of the IFR on the European market and publish a report by 9 June 2019. This report will look at the impact of the IFR, including factors such as competition, effect on merchants and consumers and will take account of new technology and business models.

The UK Government, working with the PSR and the FCA, will ensure it gathers evidence to feed into this review.

³ The Government has introduced legislation that will make the PSR the competent authority on IFR. This includes a legislative requirement to amend the Memorandum of Understanding between the PSR, FCA, Bank of England and PRA.

⁴ The Government will add article 10 (4) of the IFR (which obliges merchants to display clearly to their customers which cards they do and do not accept) to the list of Part 2 in Schedule 13 of the Enterprise Act 2002. This will allow for a complaints-led regime, overseen by both TSA and CMA.

Phase 1: caps on interchange fees

The HMT consultation response published in October 2015⁵ states that effective from 9 December 2015:

- The interchange fee cap for **domestic credit card transactions** will be 0.3%, in line with the default caps set out in the IFR.
- The card schemes will be allowed the flexibility to set a **weighted average rate for domestic debit transactions**. This means that interchange fees cannot exceed more than the equivalent of 0.2% of the annual overall transaction value of all domestic debit card transactions within each payment card scheme. This is permitted for a period of five years.
- Certain cards will be exempt from the interchange fee caps (although all cards are to be subject to the IFR's conduct of business rules). For the purposes of this document, cards caught by the pricing requirements will be known as 'price regulated cards', and those exempted will be known as 'price unregulated cards'. Exempted cards include:
 - Those issued and acquired by three party schemes. In relation to domestic payment transactions, three party schemes which rely on licensee issuers and acquirers will be exempt from the price caps if they satisfy the conditions of the exemption.
 - Commercial cards⁶. The PSR provisional guidance provides a definition of commercial cards as '*where the business account is directly debited ... In industry terminology, these cards are known as 'centrally settled' or 'centrally paid'.*'⁷

Phase 2: wider IFR requirements

There are a number of wider requirements on the retail and card industry within the IFR that will come into effect on 9 June 2016, and related requirements from the Payments Services Directive 2 (PSD2) which will come into effect in 2017. The card industry's interpretation of each provision is set out below, with the relevant regulator for each provision in brackets. The European Card Stakeholder Group, a multi-stakeholder group made up of banks (the EPC), schemes, processors, vendors and retailers, is looking at proposals to satisfy the Identification and Applications Selection issues.

- *Identification*⁸ (FCA) – in order for retailers to distinguish between cards, from 9 June 2016 issuers will need to make card-based payment products electronically identifiable, and newly issued products will also need to be visually identifiable.

⁵ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466783/Interchange_fee_regulation_response.pdf.

⁶ IFR Article 2(6)

⁷ See <https://www.psr.org.uk/psr-publications/consultations/application-of-the-IFR-in-the-uk> p15. It continues: '*The fact that the individual cardholder might receive a statement or 'bill' showing the transactions made on that specific card will not affect this classification, as long as the card issuer does not take a payment from the individual cardholder's current account. In industry terminology, this type of transaction might be referred to as 'individually billed, centrally settled'.*

⁸ IFR Article 10(5)

- *Surcharging* (TSA) – the issue of surcharging is referenced in the IFR recitals but there are no direct requirements in this regulation. The current position in the UK position is that all cards can be surcharged, so long as this is in accordance with The Consumer Rights (Payment Surcharges) Regulations 2012, which prohibits traders from charging consumers more than the direct cost borne by them as a result of the consumer using a given means of payment. When it is transposed into UK legislation in 2018, PSD2 is likely to limit surcharging on price regulated cards.⁹
- *Acceptance/ Honour all cards rule*¹⁰ (TSA for retailers and FCA for the card industry) – from 9 June 2016, retailers will no longer have to accept all cards issued under the same card scheme, although they do have to accept all issuer brands under a particular category of card scheme (e.g. personal debit cards). However, retailers must make it clear to customers which cards they accept. The information must be provided to the payer in good time before the payer enters into a purchase agreement:
 - In a shop, the information must be displayed prominently at the entrance of the shop and at the till.
 - In distance sales, the information must be displayed on the payee's website or other applicable electronic or mobile medium.
- *Application Selection/routing*¹¹ (FCA) – from 9 June 2016, retailers' payment devices may still make a priority selection between payment brands and applications, but this must be able to be overridden by the payee.
 - For contactless transactions, overriding the application would undermine the primary benefits, namely the speed of transaction, and removal of the need to interact with a payment terminal. The Card Stakeholder Group has therefore suggested that it should be permitted that to perform a single touch transaction, both parties will abandon their rights of application selection. The cardholder can choose to complete as a full contact transaction and enter a PIN if application choice is desired.

⁹ PSD2 needs to be transposed into the national laws of each Member States within 2 years of publication of PSD2 in the Official Journal of the EU (due by the end of 2015). Individual Member States may decide to implement PSD2 ahead of that deadline.

¹⁰ IFR Article 10(4)

¹¹ IFR Article 8