

<p>Title: The Payment Card Interchange Fee Regulations 2015 (Appointment of the Competent Authority and Approach to National Discretions for the Interchange Fee Regulation)</p> <p>PIR No: N/A</p> <p>Original IA/RPC No: RPC-3083(2)-HMT</p> <p>Lead department or agency: HM Treasury</p> <p>Other departments or agencies: Payment Systems Regulator Financial Conduct Authority</p> <p>Contact for enquiries: Andrew.Clemon@HMTreasury.gov.uk</p>	Post Implementation Review
	Date: 13/01/2023
	Type of regulation: EU
	Type of review: Statutory
	Date measure came into force: 09/12/2015
	RPC Opinion: N/A

1. What were the policy objectives of the measure?

Interchange fees are charges set by payment card networks, such as VISA and Mastercard. The fee is paid by merchant acquirers, which are financial institutions that process payments sent by a customer to a business. The fees collected are then paid to the customer's payment service provider, responsible for issuing their payment card. These fees have been used historically as incentives for the payment card networks to win business from these card issuers, who use VISA, Mastercard or equivalent providers as the means to process payments.

The Interchange Fee Regulation 2015 (IFR) is an EU-derived regulation that caps interchange fees charged for the acceptance of consumer debit and credit cards. The regulation required Member States (including the UK at the time) to:

- designate a competent authority;
- put in place arrangements for monitoring and enforcing compliance;
- ensure penalties for non-compliance; and
- ensure dispute resolution procedures in relation to regulated parties – namely payment services providers and payment card schemes.

This was achieved through the **Payment Card Interchange Fee Regulations 2015 (PCIFRs), which is the subject of this Review**. The IFR, which covers the substance of interchange fee policy and regulation, is not subject to this review (which is the result of a statutory requirement to review the PCIFRs alone).

The Payment Card Interchange Fee Regulations 2015 principally designated the Payment Systems Regulator (PSR) as the competent authority to monitor IFR. The FCA was also designated as co-competent, specifically in relation to monitoring and enforcing compliance with Articles 8(2), (5) and (6), 9, 10(1) and (5), 11 and 12 of the IFR. This legislation brought into effect the policy of appointing competent authorities with appropriate expertise, while making use of existing regulatory structures and processes to ensure efficiency and avoid unnecessary additional costs - which accounts for why a partially co-competent model of regulation was adopted.

Based on the current regulatory framework, these objectives could not be achieved in another way that imposes less onerous regulatory provision as the powers given to the competent authorities are necessary to ensure that the substantive legislative framework – under the Interchange Fee Regulation – is enforceable. Furthermore, the government has also committed more widely through the Future Regulatory Framework Review¹ to ensure that the competent authorities have the powers they need in future to be able to replace direct regulatory requirements in retained EU law, including in relation to payments policy. The government’s wider approach to interchange fee policy – both substantively, and related regulatory powers – will be determined under the government’s programme to enact the repeal of retained EU law in financial services and build a smarter financial services regulatory framework specifically tailored to the UK.

2. What evidence has informed the PIR?

This post-implementation review (PIR) has used evidence collected by the PSR, which collects data relating to costs of supervision and enforcement of the IFR. As a competent authority for monitoring the IFR, the PSR collects data from regulated parties to monitor compliance and issue penalties if necessary. It usually collects this data on at least an annual basis, typically through public requests to regulated parties. The PSR also includes a summary of the steps taken to deliver its commitments in its Annual Report each year, so this PIR has also been informed by the PSR’s annual reports between 2016 and 2022.

3. To what extent have the policy objectives been achieved?

The government assesses that the policy objective of appointing an appropriate competent authority with powers to enforce the IFR has been achieved. The PSR has carried out regular compliance monitoring since implementation as detailed in its annual reports and accounts², and in 2022, it closed two enforcement cases relating to the infringements of the IFR by two parties, with two penalties issued totalling £10.2m.³

The PSR has also identified other steps it is taking as part of its ongoing monitoring work:

- Continuing to monitor Visa and Mastercard’s compliance with Article 7(1)(a) of the IFR (the separation provision), in cooperation with EU national competent authorities from seven Member States, with whom the PSR entered into a Memorandum of Understanding for this purpose in 2018.
- Carrying out its annual caps monitoring exercise (Articles 3, 4 and 5), which involves:
 - Gathering data from card payment networks to assess compliance with the caps’ provisions.
 - Overseeing the implementation of actions where firms have self-reported their potential non-compliance with the IFR, in line with the PSR’s obligations under General Direction 1.

¹ See paragraph 7.30 of:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032075/FRF_R_eview_Consultation_2021_-_Final_.pdf

² [Annual Reports and Accounts | Payment Systems Regulator \(psr.org.uk\)](https://www.psr.org.uk/about-us/annual-reports-and-accounts/) <https://www.psr.org.uk/about-us/annual-reports-and-accounts/>

³ [Enforcement cases | Payment Systems Regulator \(psr.org.uk\)](https://www.psr.org.uk/our-work/enforcement-cases/) <https://www.psr.org.uk/our-work/enforcement-cases/>

- Guidance that are consequences of the change in the domestic interchange fee regime following the UK leaving the European Union.
- Monitoring proposed fee increases resulting from the UK's withdrawal from the EU and the consequent non-application of the EU fee cap (in the EU IFR) in the UK. The PSR continues to explore the impact these proposals could have on businesses and consumers.

This post-implementation review is relevant solely to the PCIFR, as required by the review clause in those regulations. As retained EU law, the IFR itself will be repealed in due course, and replaced by a comprehensive FSMA model of regulation through the implementation of the Future Regulatory Framework for Financial Services, after the Financial Services & Markets Bill receives Royal Assent.

Sign-off for Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Payments and Fintech Policy Team

Signed: Laura Mountford Date: 09.01.23

SCS of Better Regulation Unit

Signed: Linda Timson Date: 10.01.23

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

(Name, Ministerial role)

Signed: Andrew Griffith Date: 12.01.23.

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

The original assumptions relating to the PCIFRs are set out in the impact assessment submitted to the RPC in September 2015, and mainly noted that there would be small ongoing additional costs resulting from designating the PSR as the competent authority for the IFR.⁴ The costs for designating the PSR to supervise compliance of the IFR were already accounted for in the PSR's annual budget in 2015 (£1.2m per year for supervision of the IFR).

The Regulatory Policy Committee queried whether businesses would face additional costs as a result of the introduction of a penalties regime. The PSR confirmed that this would not be the case. This is because the PSR would expect to deduct its enforcement costs from the penalties it receives as per the regime in FSBRA. As such, it would not expect direct enforcement action (which is required for issuing a penalty) to impose additional costs on other parties, such as those which are compliant with the IFR.

5. Were there any unintended consequences?

No unintended consequences have been identified following these regulations.

6. Has the evidence identified any opportunities for reducing the burden on business?

No opportunities for reducing the burdens on businesses have been identified, and additional costs to business have been minimized relative to the alternative policy option (establishing a new authority). Moreover, an effective regulatory regime will require competent authorities to

⁴ [The Payment Card Interchange Fee Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukia/2015/301/pdfs/ukia_20150301_en.pdf)
https://www.legislation.gov.uk/ukia/2015/301/pdfs/ukia_20150301_en.pdf

have sufficient powers to investigate and enforce against that regime, as is common across financial services regulation.

In future, when interchange fee policy is itself reviewed more substantively, it may be the case that adjustments are needed to the powers of the authorities under the PCIFRs but such an assessment would be premature at this stage.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

The objective of the original EU legislation was to cap “unreasonably high” interchange fees and to harmonise rules across member states to work toward a more integrated and better functioning single market. The Interchange Fee Regulation requires the European Commission to review the application of the IFR and its market effects.

A corollary of this requirement and other secondary aspects of the Interchange Fee Regulation is the need for competent authorities to have powers to investigate and enforce against the regime. This was a requirement under the EU legislation that all Member States (including the UK at the time) would have implemented.

The PSR continues to work with other UK parties, such as HM Treasury, the Competition and Markets Authority and the Financial Conduct Authority as part of its regular monitoring work. The PSR has also collaborated with several EU national competent authorities, as well as the European Commission, in relation to its Article 7 work and to understand the EU’s wider IFR work programme, given that many of the stakeholders in the card payments ecosystem operate across both jurisdictions.

The UK will continue to monitor developments in related regulation in other jurisdictions, while recognising that since EU Exit the UK has the ability to determine its own approach to regulation in this area, subject to any international commitments.