



HM Treasury

Legislation to support cheque
imaging:
response to the consultation

April 2018

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ISBN 978-1-912225-79-8

PU2168

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Chapter 1

Background to the consultation

1.1 In 2015, HM Treasury introduced measures in the Small Business, Enterprise and Employment Act to allow UK banks and building societies to introduce the Image Clearing System (ICS) for cheques. ICS is an innovation that cuts down cheque clearing times from a possible six days to one day by sending a digital image of the cheque for clearing, rather than the paper cheque itself.

1.2 In November 2017, HM Treasury consulted on proposals to make provision for two measures in secondary legislation to support the introduction of the ICS:

- That a copy of a paid cheque (or other paper instrument), along with some additional information, be provided to the payer upon his or her request, and that the copy can be used as evidence of payment
- That if a customer paying using a cheque incurs a loss in connection with the presentment of a cheque under the ICS (that did not result from gross negligence or fraudulent activity on their part), and has not received compensation, the payee's bank must compensate this customer for this loss. If the paying bank incurs a loss (in the event they have already paid out compensation to the customer) the payee's bank must compensate the payer's bank.

1.3 The aim of the proposed legislation is to ensure that the ICS, which will clear all cheques by October 2018, has no detrimental impact on the existing position of cheque users.

1.4 HM Treasury received fifteen responses, and engaged with four other institutions.

Chapter 2

Cheques as evidence of payment

Question 1: Do you agree with the Government's proposed approach to legislating to require banks to provide the image of the cheque (front and back) together with the 'additional information' under the Image Clearing System?

2.1 All respondents agreed that a copy of the cheque should be made available to the customer if requested, except one who stated that the original cheque should be provided.

Further comments

2.2 Six respondents raised concerns about three pieces of additional information the consultation proposed should be provided to a customer: the sort code and account number of the payee; the time that the "pay/no pay" decision was made; and confirmation of payment by the operator of the system through which the payment was made. These respondents felt:

- that the provision of these pieces of additional information could present data protection and fraud risks
- that, given the requirement was not included in the original specification for the development of ICS, it would place a disproportionate burden on institutions to provide
- that it would not be useful to the customer
- or a combination of the above

Government response

2.3 The Government has considered these representations and has omitted the requirement to provide the pieces of information described above. As such, upon request, paying banks will have to provide a copy of the cheque together with:

- confirmation of the decision of the banker that the payment should be made (including automated decisions); the date that the decision was made (or the date upon which the automated decision was made)
- the value of the payment made
- the sort code and account number of the paying customer (drawer of the cheque)
- any reference number allocated by the banker authorised to collect payment of the instrument (used to identify the payment instrument).

2.4 This will ensure that customers have the right to a copy of their cheque, together with useful information, while minimising the burden on industry.

Chapter 3

Compensation

Question 2: Do you agree with the Government's proposed approach to legislate to ensure that a customer is not left out of pocket due to a loss incurred in connection with the presentment of a cheque under the new Image Clearing System?

3.1 Fifteen respondents answered this question. All but three stated that they agreed that no user of cheques should be left out of pocket as a result of a loss incurred in connection with the presentment of a cheque under the new ICS.

3.2 Seven respondents felt that it was not clear that the legislation was not intended to override scheme rules. Two of these felt that proposed legislation could potentially lead to increased fraud by removing incentives for the payer's bank to prevent fraud. Five respondents stated that Government should wait twelve months before introducing the legislation in order to see whether it was necessary and what type of fraud may occur.

Government response

3.3 The Government recognises that the current system, where Cheque & Credit's scheme rules stipulate which party must compensate a customer in which scenario, has generally worked well for cheque users to date. The Government nonetheless remains of the view that legislation is necessary as a backstop to ensure that customers are not left out of pocket given that the ICS represents a significant change to the way cheques are processed.

3.4 The Government's view is that it is important to prevent a scenario where a customer is left out of pocket, rather than monitoring ICS for 12 months to see if and how any such incidences occur, and then take action only after some customers have potentially suffered losses.

3.5 In response to concerns that it was not clear that the legislation did not override scheme rules, Government has amended Part 3 of the legislation to clarify that it only applies where the customer has not already been compensated (for example via the ICS scheme rules). Government also notes that the requirement for claimants to wait 56 days before making a claim was included specifically to allow other compensation schemes to be used first, and we have provided clarity on this in the Explanatory Memorandum. We have also clarified in the Explanatory Memorandum that the legislation is not intended to override existing scheme rules.

3.6 Regarding incentives for the payer's bank to prevent fraud, Government draws attention to a number of items which ensure the payer's bank still has an incentive to identify fraud:

- As a consequence of the contractual (debtor/creditor) relationship the payer's bank has with its customer, it has no mandate to debit their customer's account for an invalid cheque and may be liable to repay its customer any erroneous debit
- This legislation explicitly states that the payee's bank is not required to compensate a claimant if the claimant has been grossly negligent or knowingly engaged in fraud
- The Bills of Exchange Act 1882 is also explicit (section 89E) that, should the payee's bank compensate a customer for a loss in accordance with the proposed legislation, this does not preclude the payee's bank recouping this payment from the party where liability actually lies (e.g. the payer's bank).

Point to note

3.7 Government corrected the previous drafting of the legislation which unintentionally included a duplicate provision within regulation 5(2) of the legislation: the list of criteria required to make a claim for compensation.

Chapter 4

Other points of note

Working days

4.1 Several respondents stated that, where the legislation requires an institution to take action within a certain number of days, this should be expressed in working days, rather than calendar days. The Government agrees this would be helpful for shorter time periods, and so has amended the legislation to working days for short time periods (defined here as periods under 56 days).

Coming into force date

4.2 The legislation comes into force 21 days after the date of making.

Chapter 5

Respondents

5.1 Government received responses from the following institutions:

- Arab National Bank London
- Association of Foreign Banks
- Barclays
- C. Hoare & Co
- Chartered Institute of Credit Management
- Cheque & Credit
- DVLA
- Handelsbanken
- HSBC
- Lloyds
- Nationwide
- RBS
- UK Finance
- West Bromwich Building Society

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