

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No. 0000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

The Interchange Fee (Amendment) (EU Exit) Regulations 2018

Made - - - - *******

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Interchange Fee (Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

PART 2

Amendments of the Payment Card Interchange Fee Regulations 2015

Amendments of the Payment Card Interchange Fee Regulations 2015

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

(2) In regulation 3 (designation as a competent authority and functions)—

(a) omit paragraph (1);

(a) 2018 c. 16.

(b) S.I. 2015/1911; amended by S.I. 2018/1115.

- (b) in paragraph (2)(a) and (b), omit “in the United Kingdom”;
- (c) for the heading substitute “Functions”.
- (3) Omit regulation 16 (designation as competent authority).
- (4) Omit regulation 21 (co-operation with competent authorities in other Member States).
- (5) Omit regulation 22 (exemption from maximum interchange fees for certain three party payment card schemes).
- (6) In regulation 23 (weighted average interchange fees for domestic debit card transactions), for “domestic”, in each place where it occurs, including the heading, substitute “UK”.
- (7) In regulation 24 (review), omit paragraph (2).

PART 3

Amendments of Regulation (EU) 2015/751

Introductory

3. Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions is amended as follows.

Scope of Regulation

- 4.—(1) Article 1 (scope) is amended as follows.
- (2) In paragraph 1—
 - (a) for “within the Union” substitute “in the United Kingdom”;
 - (b) for “therein” substitute “in the United Kingdom”.
- (3) In paragraph 2(c), for “a single Member State” substitute “the United Kingdom”.
- (4) In paragraph 5, omit the words from “However, until” to the end.

Terms defined for purposes of Regulation

- 5.—(1) Article 2 (definitions) is amended as follows.
- (2) After point (4) insert—
 - “(4A) ‘UK debit card transaction’ means a debit card transaction where—
 - (a) the issuer and the acquirer are both located in the United Kingdom, and
 - (b) the point of sale is in the United Kingdom;”.
- (3) After point (5) insert—
 - “(5A) ‘UK credit card transaction’ means a credit card transaction where—
 - (a) the issuer and the acquirer are both located in the United Kingdom, and
 - (b) the point of sale is in the United Kingdom;”.
- (4) Omit points (8) and (9).
- (5) In point (22), for the words from “point 2” to “Council” substitute “regulation 2(1) of the Electronic Money Regulations 2011(a)”.
- (6) In point (24), for the words from “means” to “Directive 2009/110/EC” substitute “has the meaning given by regulation 2(1) of the Payment Services Regulations 2017(b)”.

(a) S.I. 2011/99.

(b) S.I. 2017/752; regulation 2(1) was amended by S.I. 2017/1173.

(7) In point (29)(a), for “point 7 of Article 2 of Directive 2011/83/EU,” substitute “regulation 5 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(a)”.

(8) In point (35), for “point 2 of Article 2 of Directive 2009/110/EC” substitute “regulation 2(1) of the Electronic Money Regulations 2011”.

(9) At the end insert—

“(36) ‘the Payment Systems Regulator’ means the body established under section 40(1) of the Financial Services (Banking Reform) Act 2013(b).”

Interchange fees for consumer debit card transactions

6.—(1) Article 3 (interchange fees for consumer debit card transactions) is amended as follows.

(2) In paragraph 1—

(a) after “any” insert “UK”;

(b) at the end insert “, but this is subject to paragraphs 2 and 3.”.

(3) In paragraph 2—

(a) for “For domestic card transactions Member States may” substitute “The Treasury may by regulations”;

(b) in point (b)—

(i) for the words from “EUR 0,05” to “exchange rates.” substitute “the equivalent in sterling of EUR 0.05.”;

(ii) for “domestic” substitute “UK”.

(4) In paragraph 3—

(a) for the words from “in relation to” to “may allow” substitute “the Treasury may by regulations allow”;

(b) for “all domestic”, in both places where it occurs, substitute “all UK”;

(c) for “Member States may define” substitute “This power includes power to define”.

(5) After paragraph 3 insert—

“3A. Regulations under paragraph 3 may amend regulation 23 of the Payment Card Interchange Fee Regulations 2015 (which contains provision for the purposes of paragraph 3 having effect as retained EU law).”

(6) In paragraph 5—

(a) for “The competent authorities referred to in Article 13” substitute “The Payment Systems Regulator”;

(b) for “their”, in the first place where it occurs, substitute “its”;

(c) for “to the competent authority” substitute “to the Payment Systems Regulator”;

(d) for the third sentence substitute “Any other information enabling the Payment Systems Regulator to verify compliance with the provisions of this Chapter shall be sent to the Payment Systems Regulator upon its written request and within the deadline set by it.”;

(e) in the fourth sentence, for “competent authorities” substitute “Payment Systems Regulator”.

Interchange fees for consumer credit card transactions

7. For Article 4 substitute—

(a) S.I. 2013/3134.

(b) 2013 c. 33.

“Article 4

Interchange fees for consumer credit card transactions

1. Payment service providers must not offer or request a per transaction interchange fee of more than 0.3% of the value of the transaction for any UK credit card transaction.
2. The Treasury may by regulations amend paragraph 1 so as to specify a per transaction interchange fee cap lower than 0.3% of the value of the transaction.”

Licensing

- 8.—(1) Article 6 (licensing) is amended as follows.
- (2) In paragraph 1, for “Union” substitute “United Kingdom”.
 - (3) Omit paragraph 2.

Separation of payment card scheme and processing entities

9.—(1) Article 7 (separation of payment card scheme and processing entities) is amended as follows.

- (2) Omit paragraph 2.
- (3) In paragraph 5—
 - (a) for “Union”, in each place where it occurs, substitute “United Kingdom”;
 - (b) for “European” substitute “United Kingdom”.
- (4) For paragraph 6 substitute—

“6. The Payment Systems Regulator may make technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of point (a) of paragraph 1 of this Article.”

Steering rules

10. In Article 11 (steering rules), in paragraph 3, for “Directive 2007/64/EC and Directive 2011/83/EU” substitute “the Electronic Money Regulations 2011 and the Payment Services Regulations 2017”.

Final provisions

- 11.—(1) Omit the following provisions—
- (a) Article 13 (competent authorities);
 - (b) Article 14 (penalties);
 - (c) Article 15 (settlement, out of court complaints and redress procedures).
- (2) In Article 16 (universal cards)—
- (a) in paragraph 1, for “domestic” substitute “UK”;
 - (b) omit paragraph 2.
- (3) After Article 16 insert—

“Article 16A

Treasury regulations

1. Any power of the Treasury to make regulations under this Regulation is exercisable by statutory instrument.
2. The regulations may—
 - (a) contain incidental, supplemental, consequential and transitional provision, and

(a) make different provision for different purposes.

3. A statutory instrument containing regulations made by the Treasury under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”

(4) Omit Article 17 (review clause) and Article 18 (entry into force).

(5) After Article 18, omit the words from “This Regulation shall be binding” to “Member States”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend the Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911) and Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions by amending or omitting provisions that will no longer be appropriate after the withdrawal of the United Kingdom from the European Union.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.