PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT INTERCHANGE FEE (AMENDMENT) (EU EXIT) REGULATIONS 2018

Tuesday 22 January 2019

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Saturday 26 January 2019

The Committee consisted of the following Members:

Chair: David Hanson

† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
Bryant, Chris *(Rhondda)* (Lab)
† Ellman, Dame Louise *(Liverpool, Riverside)* (Lab/Co-op)
† Glen, John *(Economic Secretary to the Treasury)*
Hoey, Kate *(Vauxhall)* (Lab)
† Knight, Julian *(Solihull)* (Con)
† Lamont, John *(Berwickshire, Roxburgh and Selkirk)* (Con)
† Lewer, Andrew *(Northampton South)* (Con)
† Morris, Grahame *(Easington)* (Lab)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Scully, Paul *(Sutton and Cheam)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Sturdy, Julian *(York Outer)* (Con)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Jack Dent, *Committee Clerk*

† attended the Committee

Fourth Delegated Legislation Committee

Tuesday 22 January 2019

[Mr David Hanson *in the Chair*]

Interchange Fee (Amendment) (EU Exit) Regulations 2018

8.55 am

The Economic Secretary to the Treasury (John Glen): I beg to move,

That the Committee has considered the draft Interchange Fee (Amendment) (EU Exit) Regulations 2018.

First, may I say what a pleasure it is to serve under your chairmanship, Mr Hanson? As the Committee will be aware, the draft regulations are part of a programme of legislation that is being undertaken by the Treasury, which will ensure that, if the UK leaves the EU without a deal or an implementation period, the UK will continue to benefit from a functioning legislative and regulatory regime for financial services. They will fix deficiencies in UK law relating to interchange fees applicable to card payments, as well as rules for card schemes, issuers, acquirers and merchants.

The approach taken aligns with that of other statutory instruments being laid under the European Union (Withdrawal) Act 2018, by maintaining the fundamentals of existing financial services legislation at the point of exit while amending it to ensure that it functions effectively in a no-deal context. The SI was debated and approved by the House of Lords last week, on 15 January.

Interchange fees are paid whenever a payment is completed using a debit or credit card. They are typically set by card schemes, for example Mastercard or Visa. They are paid from a merchant's payment service provider, also referred to as a merchant's acquirer—typically, the banks of the merchant and the consumer—to a card user's payment service provider, also referred to as a card issuer.

The 2015 EU interchange fee regulation brought in two main policy interventions. First, it imposed caps on interchange fees for transactions where both the acquirer and the card issuer are located within the European economic area; the caps do not apply where either the acquirer or the card issuer is located outside the EEA. The caps limit interchange fees for such transactions to 0.2% of the total value of the transaction for consumer debit cards, including prepaid cards, and 0.3% for consumer credit cards. Furthermore, the EU interchange fee regulation allows individual member states to apply lower caps for domestic debit and credit card transactions where both the acquirer and issuer are in that country.

Secondly, the EU regulation sets rules on card schemes, issuers, acquirers and merchants. For example, it requires the separation of card schemes and processing entities, such as Worldpay.

In the event of no deal, that EU regulation would no longer include the UK within its scope, and interchange fees would therefore no longer be capped for payments involving a UK acquirer and an EEA card issuer. Higher interchange fees that might result from that could in turn be passed on to UK businesses and consumers, directly or indirectly. Without the change in scope to UK legislation introduced by the draft regulations, caps would still apply to card payments involving an EEA acquirer and a UK card issuer, which would result in asymmetrical obligations on UK card issuers vis-à-vis EEA card issuers.

The draft regulations make the following amendments in order to ensure that retained EU law related to the 2015 EU interchange fee regulation continues to operate effectively. First, they reduce the scope of the UK legislation relating to interchange fee regulation from the EEA to the UK, in line with the general principle as set out in the approach by Her Majesty's Treasury to financial services legislation under the EU (Withdrawal) Act. That means that interchange fee caps will continue to apply to domestic card payments where both the merchant's acquirer and the card issuer are located in the UK. The interchange fee caps will no longer apply to cross-border card payments where either the merchant's acquirer or the card issuer are located outside the UK but within the EEA.

The draft regulations will continue to allow the Treasury to set lower caps on domestic consumer debit and credit card payments by making regulations that are exercisable by statutory instrument subject to the negative procedure. This approach mirrors the EU interchange fee regulation.

Secondly, the draft regulations will transfer from the European Commission to the Payment Systems Regulator the power to make regulatory technical standards regarding the requirements for separation of card schemes and their processing entities. That follows the Treasury's general approach of delegating responsibility for technical standards to the appropriate UK regulator.

In drafting the regulations, the Treasury has engaged with the PSR and with industry. To maximise transparency to Parliament and industry, we published the regulations in draft on 16 November before laying them before the House. As set out in the accompanying explanatory memorandum, which was re-laid on 19 December, the most significant change is that interchange fee caps will no longer apply where either the merchant's acquirer or the card issuer are located outside the UK but within the European economic area. Any resulting adjustment to interchange fees would be a commercial decision; such an impact would be a consequence of the UK leaving the EU, rather than of the approach taken in the regulations. The direct costs as a result of the draft regulations will be minimal—hence the de minimis impact assessment.

The draft regulations are necessary to ensure that the UK's legislative and regulatory regime for financial services remains effective under a no-deal scenario. That will be to the benefit of UK business and consumers. I hope that colleagues from all parties will join me in supporting the draft regulations; I commend them to the Committee.

9.2 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): Good morning, Mr Hanson; it is a pleasure to see you in the Chair.

Once again, the Minister and I are here to discuss one of the many Treasury statutory instruments that make provision for the financial regulatory framework after Brexit in the event that we crash out without a deal. As he well knows, on each such occasion my Front-Bench

colleagues and I have spelled out our objections to the use of secondary legislation in this manner, as well as the challenges of ensuring proper scrutiny of the sheer volume of legislation that passes through Delegated Legislation Committees.

The last instrument that we debated before Christmas related to a sprawling piece of EU financial legislation known as the markets in financial instruments directive. Our repeated requests to debate the instrument on the Floor of the House for 90 minutes were denied, even though there was ample parliamentary time. Such decisions diminish the good will between the Government and the Opposition; given the simple fact that every scenario before us requires some degree of legislative co-operation between us, that is of concern.

The prospect of no deal looms large after the chaotic events of the past week and the Government's refusal to rule it out, so we must recognise that on 29 March, instruments considered by Delegated Legislation Committees may well become what we rely on—especially given the very real risk that the Government are simply running down the clock. Such instruments could represent real and substantive changes to the statute book, so they need proper scrutiny and in-depth analysis.

As the Minister said, interchange fee regulations on credit and debit cards form an important part of consumer protection. I was therefore very concerned to read in paragraph 2.8 of the explanatory memorandum that

"cross border card payments between the UK and the EEA, where the acquirer or card issuer are based in different jurisdictions, would no longer be subject to the caps established under EU or UK law, and the card issuer could receive higher interchange fees. This means, for example, that if a consumer used a UK-issued card to make a purchase from an EEA-based merchant acquirer, then neither the UK IFR or the EU IFR would apply, because the UK would be a third country vis-à-vis the EU."

Will the Minister confirm my understanding of that paragraph, which is that no provision has been made to prevent cardholders from having to pay higher interchange fees from acquirers if we crash out without a deal? That seems to carry a very high risk of consumer detriment, given the prevalence of using cards to buy goods from across the EEA. As we are all aware, it is not uncommon for large retailers that operate in the UK and across Europe to channel payments across locations in the EEA—that is certainly the case for many large online retailers. Will the Minister therefore state the Government's intention for the transposition of payment services directive II, which contains vital provisions to prevent surcharging for card usage?

Secondly, the legislation notes that the technical standards for interchange fee regulations will be transferred to the Payment Systems Regulator in the UK, which published a consultation on the matter in December 2018. The PSR is still a relatively new regulator. Can the Minister explain how the PSR will be sufficiently resourced to cope with that new workload?

The interchange fee regulations have been a large and contentious issue at an EU level for a number of years. They have required extensive engagement with stakeholders and the triangulation of competing interests. It is therefore no small matter to move those functions over to the domestic regulator. I shall be grateful if the Minister provides further detail on those points.

9.5 am

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to join you here in Committee again, Mr Hanson. I echo a lot of the concerns that the hon. Member for Stalybridge and Hyde expressed about the scheme.

It seems to me that, as with all things to do with Brexit, we are moving backwards. The EU and the EU Commission have moved over many years to reduce fees to make transactions simpler. What we are doing here, particularly with the statutory instrument and the prospect of a no-deal Brexit in the offing, is going backwards—reducing the benefits that our citizens have, and their ability to carry out transactions, to work, travel and live across different countries and to carry out their business.

I seek a couple of points of clarification. My understanding is that the explanatory information differentiates between credit cards and debit cards, but that differentiation is not within the SI itself, which mentions only credit card transactions—

"0.3% of the value of the transaction for any UK credit card transaction."

In the explanatory information, debit cards are differentiated from credit cards. I would like to understand from the Minister why that is the case. Obviously, it would be to the detriment of debit card users were they to pay that higher fee because they are not recognised in the legislation.

A briefing that I found on the legal firm Bird & Bird's website mentions that higher interchange fees could be passed on to consumers, "either directly or indirectly", as it says in the explanatory memorandum. Bird & Bird says that "indirectly" is perhaps

"a reference to the fact that UK merchants may increase their retail prices in order to recoup the increase in interchange fees."

Baroness Bowles mentioned in the Lords that before the EU interchange fee was introduced in 2015, the cost passed on to goods across the EU was €9 billion in 2011 alone. I would like to know from the Minister the estimated cost of the fee to ordinary people buying things in shops, because he has not provided explanatory information on the basis that it does not make the £5 million threshold. That might be a cost to business, but what is the cost to consumers? It is unclear from what the Government have provided what the cost will be to consumers of increased interchange fees.

Bird & Bird goes on to say:

"The reference to 'directly' would seem to be a reference to surcharging. However it is not clear to us how this would be possible since the Consumer Rights (Payment Surcharges) Regulations 2012 prohibit merchants from surcharging consumer cards altogether (whether in relation to transactions that are subject to interchange fees caps, or not)."

I would be curious to hear from the Minister what "directly" refers to, because it does not seem to me that it is something that is permitted—certainly it is not as far as Bird & Bird is concerned.

Bird & Bird also noted the reference in paragraph (2) of regulation 11, "Final provisions", to article 16 on universal cards. Bird & Bird says that

"it is proposed to keep the article on 'universal cards' under the UK regime—however this article is not relevant to the UK. It is relevant to a situation where consumer credit cards and consumer debit cards are 'not distinguishable'".

They definitely are within the UK. Bird & Bird goes on to say that that is

"applied exclusively (or at least primarily) in France."

Bird & Bird is therefore not quite clear why that is being passed through. I appreciate that the Minister said that

[Alison Thewliss]

the instrument was not about making changes but about transposing things. However, it is transposing something that is not actually relevant. May we have further clarification on that?

May we also have a bit of clarity on how the matter will be monitored in future? The provision is for the event of no deal. We hope very much that that will not be the case, but if it is, the increase in UK-EEA cross-border transaction fees would be set by Treasury regulation. Will the Minister give more clarity on how that oversight of Treasury regulation would be carried out? Is this matter just for the Treasury to go off and decide? When we find that consumers are suddenly being charged more, how do we then question and monitor that in the years ahead? What is the Government's plan for this area?

It just seems to me that this measure is giving too much power to commercial companies. The Government say that this matter will be a commercial decision for companies, but that will almost certainly be—because these things almost always end up being—to the detriment of our constituents. I would like to see a bit more pressure on the Government to keep a bit more control over these interchange fees, rather than letting the market decide, because as I said and as was pointed out before in the Lords, the market deciding ended up with customers losing out quite a lot.

We can all remember—it was not very long ago, indeed—that if we travelled and tried to make transactions, we would always get a fee on our bills. That fee has been reduced and the situation has improved over time. So I do not see why the Government should allow companies to decide this matter, when it has been EU regulations over the piece that have managed to drive down these fees, to the benefit of all of us in this country.

Finally, I just ask the Minister to rule out no deal, because we do not want to get to no deal. We do not want this piece of legislation that we have been poring over actually to end up being used, because that would be a disaster for all of us, right across these islands, and I hope very much that we do not get to a no-deal situation. It would be useful to hear more from the Minister on that issue.

9.11 am

John Glen: I thank the hon. Members for Stalybridge and Hyde and for Glasgow Central, for their points. I will do my very best to respond to them all.

First, I will address the overall context of where we are. It would be wholly undesirable for us to have a no-deal outcome, but my job is to deliver 63 statutory instruments to ensure that we have a functioning regime in place. Never has so much effort gone in to achieving something that hopefully we will not need.

I acknowledge the rigour and seriousness with which the Opposition Front Benchers have taken to this task, and I take on the points that are repeated each time. All I can say is that I will seek to maintain good will by giving as full an explanation as possible. Where I can, I will follow up with letters if I do not know all the responses that are sought.

Now I will seek to address the points that have been made, in sequence. The hon. Member for Stalybridge and Hyde mentioned the issue that was raised in the Lords concerning, first of all, the scope of this measure and why we are taking action under this mechanism. This SI reduces the scope of the UK legislation relating to interchange fee regulation from the EEA to the UK, and it maintains caps on transactions that involve only UK entities. It is laid under the EU (Withdrawal) Act, which transfers directly applicable EU law to the UK statute book, and it gives the Government the power to amend legislation to fix any provisions. However, it does not allow us to innovate.

Baroness Bowles of Berkhamsted legitimately wanted us to move forward and insert a cap so that we would not be vulnerable in a third-country situation to whatever might come from the EEA, but that is not something that the Government are permitted to do under this legislation. So, the measure is limited just to making those fixes, to restrain the Government from that sort of proactive innovation.

Linked to the point about the payment services directive, I will say that all legislation that is ongoing through the EU will be subject to the in-flight files Bill, which is now going through the House of Lords and will come to the Commons, I believe in February. That will determine the mechanism by which we onshore files that are ongoing.

So, there is a deliberate restraint on innovation during this SI process, which therefore prompts questions. However, what we cannot do in this situation is to assert proactively what sort of third country we want to be to the EU, when the EU has not offered a reciprocal arrangement that would make sense.

Jonathan Reynolds: I understand very clearly what the Minister is saying. However, we have sold this process to the public and to our colleagues in the rest of Parliament as a process that continues the status quo. I understand that logically what the Minister is saying is absolutely right; effectively, he is saying that we cannot innovate to provide for the status quo. By transposing this measure, however, we are actually diminishing the position of British consumers, which is of concern.

John Glen: I fully recognise that that is a legitimate point to raise, but in addition to this process we have the in-flight files Bill, which determines how we would go about onshoring—or not—provisions of ongoing directives, and we are also working on financial services legislation for the 2019-20 session, which would seek to respond holistically to the challenges that would be presented in a no-deal scenario. We are not passively waiting to be vulnerable, but this is the first stage of a process that we would have to undertake. It would be complex and time-consuming, and there would be a lot of work to be done, but that is where we are.

With respect to the challenge posed by the hon. Member for Glasgow Central about no deal, I really do not want to see a no-deal. There are a lot of observations that a managed no-deal would be okay, but what is not clear to me is how one determines that degree of management. It seems to me to be quite a random set of actions and the consumer detriment in the short term would be considerable.

I have covered the point about why I am using secondary legislation rather than primary legislation, and the constraints under which I have to act. I was

asked about the capacity and expertise of the payment systems regulator to deal with these new responsibilities. The payments systems regulator was set up four years ago. It has issued public statements on the actions that it is taking. In the Treasury, we are confident that it will be making adequate preparations and effectively allocating resources ahead of March 2019. It has responsibility for monitoring and enforcing compliance with the new interchange fee regulation and for some regulation of the UK payments systems. We remain confident in its ability to continue to discharge its responsibilities.

The hon. Member for Glasgow Central raised the issue of the de minimis impact assessment. It has been prepared in line with the better regulation guidance, and we consider that the net impact on businesses would be less than £5 million a year. There is potential for limited costs relating to compliance reporting to the payments systems regulator, and that is where that cost comes from. Firms will benefit from the reduction in uncertainty under a no-deal scenario, and without this instrument legislation would be defective and firms would be left to deal with an unworkable and inconsistent framework that would substantially disrupt their businesses.

The hon. Lady made a number of points related to the Bird & Bird legal paper. I have not seen that. To be fair, I would prefer to reflect on that fully and write to her in detail, so I can address some of the concerns raised around different drafting elements of it. She asked whether the SI capped debit card fees. We are maintaining a domestic cap for debit and credit card transactions. Those are referred to in amendments made to articles 3 and 4 by regulations 6(1) and 7(1). However, their derivation applies only to debit card transactions in the existing law.

I was asked about the broader question of monitoring the interchange fee in future, as a third country in a no-deal situation. Clearly, the Government keep all policy under review, but we would need to look proactively as soon as possible at what would be the appropriate arrangement to come to. As has been made clear in the discussion this morning, if we were a third country the 0.2% and 0.3% cap would not automatically be applied, and that would have serious implications.

Jonathan Reynolds: I understand what the Minister is saying about the unworkability of the legislation if this does not go through, but from what he is saying it seems that if this SI were not passed, the British consumer would be in a stronger position than if it were passed. When we think about the circumstances of no deal—immediate tariffs, almost certainly some further depreciation of sterling, higher inflationary pressures—I am not sure that we are in a position to say that passing this legislation is in the best interests of the British consumer.

John Glen: We have to remember that this is in a no-deal situation; we would be outside and without the scope of the EU regulations of which we are currently a part. We would have no regulations for maintaining the caps within the UK. All we are doing is domesticising that existing provision as far as we can, within a UK environment. In our engagement with industry and with the PSR, it has been recognised that this is necessary but it is not the final solution. That is why there would need to be further innovation and policy work subsequently, as I have set out.

In conclusion, the SI is needed to ensure that the UK continues to have a functioning legislative and regulatory regime for payment card interchange fees in the event of a no-deal scenario. I have reiterated my belief that that should not be the outcome we secure in the end, but I hope I have dealt with the points raised. I will return to the hon. Member for Glasgow Central on her specific concern about the Bird & Bird note, and I shall make that available to the Committee.

Alison Thewliss: I thank the Minister for his offer to write and for the welcome letters he has sent after previous inquiries. Does he accept, however, that this is completely inadequate? We came here this morning with serious questions, and we are being asked to approve the SI without any impact assessment. It is great that the Minister will write to us, but that will be after we have voted.

John Glen: I draw the hon. Lady's attention to the de minimis assessment that was passed as per the rules of the House and that sets out the impact of this SI, as well as to the consequences of our engagement with industry and the regulator that suggest that it is necessary in a no-deal scenario. The hon. Lady refers to specific legal drafting, which I am confident can be addressed. There is scope within the SI programme, in the last four or five SIs, for us to address any issues that have been raised, but the regulations have been scrutinised by the Lords Committee and no points were raised. I do not take her concerns lightly, but when referring to legal drafting I do not want to give an ad hoc response when that would clearly be problematic. I hope that members of the Committee have found this morning's sitting as informative as I could make it, and that they will join me in supporting the regulations.

Question put and agreed to.

9.22 am

Committee rose.