EXPLANATORY MEMORANDUM TO

THE FEES FOR PAYMENT OF TAXES, ETC. BY CARD REGULATIONS 2020

2020 No. 657

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument, with effect from 1 November 2020, provides that a fee must be paid in respect of any payment made to the Commissioners for HMRC ("the Commissioners") by business credit or debit card. It also revokes the Fees for Payment of Taxes, etc. by Credit Card Regulations 2016 (SI 2016/333) and the Fees for Payment of Taxes, etc. by Credit Card (Amendment) Regulations 2017 (SI 2017/1262).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 These Regulations are made in exercise of the powers conferred by section 136 of the Finance Act 2008.

6.2 Section 136(1) of that Act permits the Commissioners to make regulations to provide that, where a person makes a payment to the Commissioners (or their authorised person) using a specified method of payment, the person must also pay a fee.

6.3 Section 136(2) of that Act requires that before exercising that power, the Commissioners must expect that they will be required to pay a fee or charge in connection with payments made using the specified method of payment.

6.4 This instrument makes provision for a fee to be paid to the Commissioners in respect of payments made using business debit cards as well as business credit cards.

7. Policy background

What is being done and why?

7.1 Section 136 of the Finance Act 2008 provides for the Commissioners to introduce regulations to charge a fee where a payment is made to HMRC (or a person authorised by HMRC) and the payment method used gives rise to the expectation that HMRC (or a person authorised by them) will be charged a fee in connection with the payment method. HMRC incurs these fees when accepting payments from business debit and credit cards.

7.2 Business debit cards account for around 5% of payments received by HMRC (2.6 million transactions). The fee is a small percentage and the average charged on a business debit card transaction is around £1.50. In total this currently costs HMRC around £3.8 million per year, around 40% of HMRC's total bank charges.

7.3 Section 136 of the Finance Act 2008 supported HMRC's policy of accepting credit cards in a wider range of circumstances than previously, by allowing the recovery of a fee so that the cost of processing such payments was not borne by the public purse.

7.4 The use of personal credit cards as a method of paying HMRC was withdrawn from 13 January 2018 (except transactions at ports and airports). This was to ensure that the public purse did not generally bear the cost of personal credit card payments, when, in consequence of the European Union Payment Services Directive 2 (Directive (EU) 2015/2366), from 13 January 2018 the charging of fees for the use of personal credit cards was generally prohibited.

7.5 From 1 November 2020 in line with policy that payments are received at no cost to the public purse and under the provisions of section 136 of the Finance Act 2008 HMRC will extend the charging of fees to cover business debit cards as already happens for business credit cards. There remain many alternative methods of payment that do not incur a fee including direct debit, bankers automated clearing system, clearing house automated payment system and faster payment.

7.6 Personal debit cards are unaffected by the instrument and can still be used without fees.

7.7 From 1 November 2020 the fee charged for using business debit and credit cards to make a payment will be calculated by combining the total of the fees charged to HMRC in connection with the payment. These are: the interchange fee, a fee paid to the card issuing bank to cover handling costs; the scheme fee, a fee paid to the card scheme e.g. Mastercard or Visa; and the merchant acquirer fee, a small processing charge per transaction for using a payment gateway. This replaces the previous fixed fees charged on business credit cards that were a set rate depending on which card was used.

7.8 The new method for determining the fee ensures that HMRC will recover the amount it is charged in connection with the payment and no more, without the need for regular

amendments to the regulations, as any changes to fees charged to HMRC will automatically be passed onto to customers.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Fees for Payment of Taxes, etc. by Credit Card Regulations 2016 (SI 2016/333) and the Fees for Payment of Taxes, etc. by Credit Card (Amendment) Regulations 2017 (SI 2017/1262) are being revoked; this instrument now covers charges for using business debit and credit cards.

10. Consultation outcome

10.1 HMRC consulted on the policy that led to the introduction of section 136 and reference to the consultation and responses can be found in: https://www.legislation.gov.uk/ukia/2008/51/pdfs/ukia_20080051_en.pdf.

10.2 The extension to cover business debit cards applies the established principle that payments should be received at no cost to the public purse; it fixes a longstanding anomaly that meant payment by business debit card was accepted at a cost to the public purse. It does not remove the right to pay with a business debit cards, it simply puts them on an equal footing with credit cards. There are still many ways customers can pay without incurring a fee, such as bank transfers.

10.3 People will still be able to pay with business debit cards, albeit at the cost of a modest fee (on average around £1.50), or they can use a variety of other cost-free alternatives.

10.4 As the legislation makes a minor change a technical consultation on its drafting would be disproportionate.

11. Guidance

11.1 Guidance available on the government website (www.gov.uk) will be updated at least 1 month before the changes come into effect to reflect the fees that will be charged, it will also list other available payment methods that carry no fees.

11.2 Customers choosing to make payment by business credit or debit card by telephone or by using the internet payment service will be advised, at the point of making payment but prior to confirming the payment, of the amount of the fee to be charged for their payment under the new Regulations. They will also be made aware of alternative methods of payment that do not incur a fee.

12. Impact

12.1 The impact on business, charities or voluntary bodies is minimal as payments can still be made by business debit card. There are alternative methods of payment that will not incur a charge, these make up most of the payments received by HMRC. The average fee charged on a business debit card transaction will be around £1.50. We expect customers to move to alternative payment methods but do not have data to estimate this.

12.2 The impact on the public sector is that the public purse will no longer bear the costs incurred by people choosing to pay with business debit cards.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that HMRC offers a variety of other payment options that incur no charge.

13.3 The basis for the final decision made on what action to take to assist small businesses aligns with the overall policy objective to ensure that payments are not received at a cost to the public purse.

14. Monitoring & review

14.1 Limited monitoring is required as the instrument applies a flexible rate that passes on the cost incurred by HMRC to the customer.

14.2 The regulation does not include a statutory review clause as none is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 because the instrument makes provision in connection with a provision imposing a tax.

15. Contact

15.1 Benjamin Reed at HMRC, Telephone: 03000 547236 or email: benjamin.reed@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Helen Page, Deputy Director Tax Administration Policy and Strategy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.