

## EXPLANATORY MEMORANDUM TO

### THE IMMIGRATION ACT 2014 (CURRENT ACCOUNTS) (FREEZING ORDERS: CODE OF PRACTICE) REGULATIONS 2017

2017 No. 930

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument brings into force a Code of Practice specifying the factors that the Secretary of State will take into account when applying for a freezing order under section 40D of the Immigration Act 2014 (“the 2014 Act”), including applications for varying or discharging existing orders.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 Part 3 (Access to Services) of the 2014 Act contains provisions for the purpose of restricting access to banking services in the United Kingdom by certain persons who are not lawfully entitled to enter or remain in the United Kingdom.
- 4.2 Section 40 prohibits banks and building societies (“firms”) from opening current accounts for disqualified persons without first carrying out a status check which indicates that the person in question is not a “disqualified person” (a disqualified person is defined in section 40 as a person in the United Kingdom who requires leave to enter or remain in the United Kingdom but does not have it and for whom the Secretary of State considers that a current account should not be opened by a bank or building society).
- 4.3 Sections 40A to 40H, which were inserted by the Immigration Act 2016 (“the 2016 Act”), require firms to conduct periodic “immigration checks” in relation to their existing current accounts, and notify the results to the Home Office. The immigration checks are made with an anti-fraud organisation or data-matching authority specified by the Home Office. If such a check indicates that a person who holds a current account with the firm is a disqualified person, the firm must notify the Home Office, who may then require the firm to close any accounts it holds for that person.
- 4.4 Under section 40D of the 2014 Act, the Secretary of State may apply for a freezing order to prohibit withdrawals or payments from the account(s).

- 4.5 Section 40F of the 2014 Act states that a Code of Practice must be laid before Parliament which specifies the factors the Secretary of State will consider when deciding whether to apply for a freezing order. These Regulations are the first exercise of those powers.
- 4.6 These Regulations are made under section 40F (3)(b) of the 2014 Act, and will bring the Code of Practice into force on 30 October 2017.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is all of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 The 2014 Act prohibited firms from opening new current accounts for disqualified persons. The prohibition came into force on 1 December 2014.
- 7.2 However, it is possible that a proportion of firms' existing current accounts, opened before the 2014 Act came into force, may belong to persons who were never legally resident in the United Kingdom, or whose entitlement to legal residence has ceased. In addition, accounts may be held legally now, but belong to persons who become illegal immigrants in the future.
- 7.3 The 2016 Act amended the 2014 Act to further curtail access to banking for disqualified persons. This forms part of a series of measures being introduced by the Government in the Act which are aimed at making it difficult for illegal migrants to live and work in the United Kingdom; incentivising voluntary departure; and deterring legal migrants from breaching conditions of stay.
- 7.4 The amendments to the 2014 Act effected by the 2016 Act require firms to check details of all existing current account holders against the details of disqualified persons, which the Home Office will share with a specified anti-fraud organisation or data-matching authority. After making a check, firms are required to notify the Home Office of any matches as soon as is reasonably practicable. Firms must provide the Home Office with information prescribed in Regulations relating to any accounts which they believe are operated by or for a person who they believe to be a disqualified person. The Home Office is required to check whether the person is a disqualified person. If they determine that the person is not a disqualified person, the firm is not required to take any further action. If the Home Office determines that the person is a disqualified person, the Home Office will either apply to a court for a freezing order, or, in the majority of cases, instruct the firm to close any accounts it holds for the disqualified person as soon as is reasonably practicable.
- 7.5 When applying to a court for a freezing order, the Secretary of State will take into account factors specified in the Code of Practice. These Regulations are being made to enable the Code of Practice to be brought into force. The Code of Practice includes guidance on arrangements for keeping the orders under review and the circumstances

in which it will be appropriate for the Secretary of State to apply for the freezing order to be varied or discharged.

### ***Consolidation***

- 7.6 As this instrument is the first to be made under the enabling power, no question of consolidation arises.

## **8. Consultation outcome**

- 8.1 The Government undertook informal consultation with the banking sector prior to the introduction of the 2016 Act, and further informal consultation with the banking sector on the drafting of these instruments.
- 8.2 A copy of the Code of Practice is available from the Stationery Office, and can also be assessed at: <https://www.gov.uk/government/publications/freezing-orders-draft-code-of-practice>.

## **9. Guidance**

- 9.1 No guidance has been prepared specifically on this instrument on the basis that it will not implement a change in policy. This instrument is made only to bring the Code of Practice into force.

## **10. Impact**

- 10.1 There is no direct impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal, and is limited to the use of the Code of Practice by the Secretary of State when applying for a freezing order
- 10.3 An Impact Assessment has not been prepared specifically for this instrument. A final stage Impact Assessment was submitted for the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016 and for the Immigration Act 2014 (Current Accounts) (Compliance &c) Regulations 2016. This Impact Assessment was given a Green Opinion by the RPC. A copy is available at:  
[http://www.legislation.gov.uk/ukia/2016/244/pdfs/ukia\\_20160244\\_en.pdf](http://www.legislation.gov.uk/ukia/2016/244/pdfs/ukia_20160244_en.pdf)

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring and review**

- 12.1 There is a duty on the Secretary of State under section 45 of the 2016 Act to review, and prepare a report for Parliament on, the measures contained in Schedule 7 to the 2016 Act, under which sections 40D and 40F of the 2014 Act were introduced, within five years from the date that the measures come into force in full.

## **13. Contact**

- 13.1 Harriet Rathbone at the Home Office (Telephone: 020 7035 0058 or email: [harriet.rathbone1@homeoffice.gsi.gov.uk](mailto:harriet.rathbone1@homeoffice.gsi.gov.uk)) can answer any queries regarding the instrument.