

EXPLANATORY MEMORANDUM TO
THE MAGISTRATES' COURTS (IMMIGRATION ACT 2014) (FREEZING
ORDERS) RULES 2018

2018 No. 66 (L. 1)

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of the Magistrates' Courts (Immigration Act 2014) (Freezing Orders) Rules 2018 ('the Rules') is to make provision for the procedure to be followed where the Secretary of State makes an application for a freezing order pursuant to section 40D of the Immigration Act 2014; to make provision in respect of applications to vary or discharge a freezing order and to make provision in respect of any hearing to determine any such application.

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 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 Section 144 of the Magistrates' Courts Act 1980 allows the Lord Chief Justice, with the concurrence of the Lord Chancellor, to make rules regulating and prescribing the practice and procedure of Magistrates' Courts, except in relation to any criminal cause or matter, or family proceedings. Since proceedings relating to account freezing orders are neither criminal nor family proceedings, these Rules are made under section 144.
- 4.2 Part 3 (Access to Services) of the Immigration Act 2014 ('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.
- 4.3 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).

- 4.4 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 decide to apply to the court for a freezing order or otherwise require the firm to close any accounts it holds for that person.
- 4.5 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). In England and Wales such applications are to be made to a magistrates’ court. Section 40D also provides for the court, on the application either of the Secretary of State or of a person or body by or for whom the account is operated, to be able to vary or discharge a freezing order which has been made. These Rules deal with the procedure for these applications in the magistrates’ court.
- 4.6 The Immigration Act 2016 (Commencement No. 5) Regulations 2017 brought the requirement for periodic immigration checks and the measures in relation to freezing orders fully into force on 30 October 2017. The Immigration Act 2014 (Current Accounts) (Compliance &c) Regulations 2016 set out that a bank or building society must carry out an immigration check during each successive quarter of each year, beginning with the quarter commencing on 1 January 2018.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to 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 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 2016 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.
- 7.2 The amendments to the 2014 Act made by the 2016 Act require banks and building societies 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, banks and building societies are required to notify the Home Office of any matches as soon as is reasonably practicable. Banks and building societies must provide the Home Office with information prescribed in Regulations relating to any accounts which they believe are operated by or for a person whom they believe to be disqualified. 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 bank or building society in

question 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 bank or building society to close any accounts it holds for the disqualified person as soon as is reasonably practicable.

- 7.3 These Rules set out the procedure for the Secretary of State to apply to the court for a freezing order and for the Secretary of State, or a person or body by or for whom the account is operated, to apply to the court to vary or discharge a freezing order which has been made.
- 7.4 The Rules are intended to operate largely as a self-contained body of rules and to be as simple as possible. In pursuit of the former aim, the Rules make provision covering all instances in which documents (such as notices of hearings or copies of applications or orders) must be given to any person, and support that with comprehensive provision, which is drawn from provision in Civil Procedure Rules applicable to proceedings in the County Court, High Court and Court of Appeal, for the manner in which documents may be so given. In pursuit of the latter aim, the Rules do not prescribe any forms, instead providing that applications shall be made in writing, and set out the information which is required to be provided for each sort of application which may be made.

Consolidation

- 7.5 These Rules are in themselves new and self-contained. They do not directly amend the Magistrates' Courts Rules 1981, and no consolidation is planned.

8. Consultation outcome

- 8.1 No consultation was required for these Rules, though the Government undertook informal consultation with the banking sector prior to the introduction of the Immigration Act 2016 and further informal consultation with the banking sector on the drafting of the implementing regulations. That consultation informed the policy decisions made in the regulations.

9. Guidance

- 9.1 The Home Office has published a Code of Practice setting out the factors which will be considered by the Secretary of State when deciding whether to apply for a freezing order.
- 9.2 No guidance has been prepared specifically on these Rules on the basis that they will not implement a change in policy.

10. Impact

- 10.1 These Rules have in themselves no impact on businesses, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal and is limited to the use of the Rules by the Secretary of State when involved in proceedings related to freezing orders.
- 10.3 An Impact Assessment has therefore not been prepared specifically for this instrument. Home Office estimates in relation to the impact of the bank account measures in the 2016 Act can be found in the Impact Assessment prepared for the Bill:

www.gov.uk/government/publications/immigration-bill-part-2-access-to-services

The Government Impact Assessment produced for the secondary legislation which implemented these measures can be found here:

www.legislation.gov.uk/ukxi/2016/1252/impacts

11. Regulating small business

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

12. Monitoring & 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, pursuant to which section 40D was inserted into the 2014 Act, within five years from the date that the measures come into force in full.

13. Contact

- 13.1 Stephen Vail at the Home Office Telephone: 0207 035 8443 or email: Stephen.Vail@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.