

**2014 No. 3085**

**FINANCIAL SERVICES AND MARKETS**

**IMMIGRATION**

**The Immigration Act 2014 (Bank Accounts) Regulations 2014**

*Made* - - - - *19th November 2014*

*Coming into force* - - *12th December 2014*

The Treasury, in exercise of the powers conferred by section 41 of the Immigration Act 2014(**a**), make the following Regulations.

In accordance with section 74(2) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

**1.** These Regulations may be cited as the Immigration Act 2014 (Bank Accounts) Regulations 2014 and come into force on 12th December 2014.

**Interpretation**

**2.** In these Regulations—

“the Act” means the Immigration Act 2014;

“the 2000 Act” means the Financial Services and Markets Act 2000(**b**);

“approved person” means a person in relation to whom the appropriate regulator (within the meaning of section 59(4) of the 2000 Act) has given its approval under section 59 of that Act(**c**);

“authorised person” has the meaning given in section 31(2) of the 2000 Act(**d**);

“current account authorised person” means an authorised person to whom the prohibition in section 40 of the Act applies;

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(a) 2014 c.22.

(b) 2000 c.8.

(c) Section 59 is amended by section 14 of and paragraph 3 of Schedule 5 to the Financial Services Act 2012 (c.21), section 18 of and paragraph 1 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2012/1906 and S.I. 2013/1773.

(d) Section 31 is amended by section 11 of the Financial Services Act 2012.

“disqualified person” has the meaning given in section 40(3)(b) of the Act;  
“the FCA” means the Financial Conduct Authority;  
“the PRA” means the Prudential Regulation Authority;  
“regulated activity” means an activity which is a regulated activity for the purposes of the 2000 Act in accordance with section 22 of that Act(a);  
“relevant requirement” means the prohibition imposed by section 40 of the Act, or any prohibition or requirement imposed on persons other than the FCA by or under these Regulations;  
“the Tribunal” has the meaning given in section 417(1) of the 2000 Act(b).

## PART 2

### The FCA

#### Functions of the FCA

3. In discharging its functions under these Regulations (including its functions under any provision of the 2000 Act as applied by these Regulations), the FCA must have regard to—

- (a) the need to use its resources in the most efficient and economic way;
- (b) the principle that a burden or restriction which is imposed on the carrying on of an activity, or on a person other than a disqualified person, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (c) the responsibilities, including those affecting consumers, of the senior management of current account authorised persons in relation to compliance with relevant requirements;
- (d) the desirability where appropriate of the FCA exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different current account authorised persons;
- (e) the desirability in appropriate cases of the FCA publishing information relating to persons on whom relevant requirements are imposed, or requiring such persons to publish information;
- (f) the principle that the FCA should exercise its functions as transparently as possible.

#### Monitoring and enforcement

4.—(1) The FCA must maintain arrangements designed to enable it to determine—

- (a) whether current account authorised persons are complying with any relevant requirements applicable to them, and
- (b) whether there has been a contravention of regulation 20 (misleading the FCA).

(2) The FCA must also maintain arrangements designed to enable it to enforce relevant requirements.

#### Complaints

5.—(1) The FCA must maintain arrangements designed to enable persons to submit complaints to it alleging that a relevant requirement has been breached by a current account authorised person (“the complaints arrangements”).

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(a) Section 22 is amended by section 7 of the Financial Services Act 2012.

(b) The definition was inserted by S.I. 2010/22. There are other amendments to section 417(1), but none is relevant here.

(2) Up-to-date details of the complaints arrangements must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.

### **Penalties**

6. Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the 2000 Act<sup>(a)</sup> apply with respect to the discharge of the FCA’s functions under these Regulations with the following modifications—

- (a) the reference to the 2000 Act in each of paragraphs 19, 20(2), 20(3)(b), 20(5)(a), 20(8)(a), 21(1) includes a reference to these Regulations, and
- (b) the FCA’s enforcement powers referred to in paragraph 20(4) include—
  - (i) its powers under regulations 15 to 19 (public censure, statement of misconduct etc), and
  - (ii) its powers with respect to the investigation or prosecution of offences under regulation 20 (misleading the FCA).

### **Fees**

7. Paragraph 23 (fees) of Schedule 1ZA to the 2000 Act applies with respect to the discharge by the FCA of its functions under these Regulations with the following modifications—

- (a) the qualifying functions of the FCA referred to in sub-paragraphs (1) and (2) include its functions under these Regulations;
- (b) the reference to the 2000 Act in each of sub-paragraphs (7) and (8) includes a reference to these Regulations.

### **Exemption from liability in damages**

8. Paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the 2000 Act applies with respect to the discharge or purported discharge of the FCA’s functions under these Regulations with the following modifications—

- (a) the reference to the FCA’s functions in sub-paragraph (1) includes a reference to its functions under these Regulations, and
- (b) the reference in sub-paragraph (2) to sections 166 to 169 includes a reference to those sections as applied by these Regulations.

## **PART 3**

### **Reporting and information**

#### **Reporting requirements**

9.—(1) A current account authorised person (“P”) must provide the FCA with such information in respect of its compliance or non-compliance with any relevant requirement applicable to it as the FCA may direct.

(2) P must provide the FCA with information required to be given under this regulation at such times, in such form, and verified in such manner, as the FCA may direct.

(3) If at any time P considers that it is unable to comply with a relevant requirement applicable to it, P must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

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(a) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773. Other amendments are not relevant here.

## **Record keeping**

**10.**—(1) A current account authorised person (“P”) must maintain relevant records in retrievable and legible form for no less than five years from the date on which the records were created.

(2) For the purposes of this regulation, records are relevant where they contain information relevant to demonstrating P’s compliance or non-compliance with any relevant requirement applicable to P.

## **Specified organisations or authorities: information-sharing**

**11.**—(1) An anti-fraud organisation or data-matching authority specified by the Secretary of State under section 40(3) of the Act(a) shall give the FCA such information within its possession or under its control in respect of—

- (a) disqualified persons, and
- (b) status checks carried out by current account authorised persons for the purposes of section 40 of the Act,

as the FCA may direct.

(2) A specified organisation or authority must provide the FCA with information required to be given under this regulation at such times and in such form, and verified in such manner, as the FCA may direct.

(3) Regulations 14 (investigations under Part 11 of the 2000 Act), 15 (public censure), 17 (financial penalties) and 24 to 30 (requirement to issue warning notice etc.) apply with necessary modifications to an anti-fraud organisation or data-matching authority specified by the Secretary of State under section 40(3) of the Act as if such organisation or authority was a current account authorised person.

## **Restrictions on disclosure of information**

**12.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348), and 352 (offences) of the 2000 Act(b) apply in relation to the functions of the FCA under these Regulations with the following modifications—

- (a) each reference to the 2000 Act in those sections includes a reference to these Regulations;
- (b) the reference in section 348(5)(d) to sections 166A and 166 of that Act includes a reference to those sections as applied by these Regulations, and
- (c) the reference in section 348(6)(b) to a competent person refers to a competent person appointed by the FCA to conduct an investigation under Part XI of the 2000 Act as applied by these Regulations.

## **Disclosure of confidential information**

**13.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(c) apply in relation to the functions of the FCA under these Regulations.

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(a) See S.I. 2014/22. See also section 40(4) of the Act for the meaning of “specified”.

(b) Section 348 is amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013. Section 349 is amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, S.I. 2007/1093 and S.I. 2011/1043. Section 352 is amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(c) S.I. 2001/2188, amended by S.I. 2001/3437, S.I. 2003/2174, S.I. 2003/2817, S.I. 2005/3071, S.I. 2006/3413, S.I. 2010/1265, S.I. 2012/916 and S.I. 2013/472. Other amendments are not relevant here.

## PART 4

### Investigatory powers

#### Investigations under Part 11 of the 2000 Act

**14.**—(1) Part 11 (information gathering and investigations) of the 2000 Act<sup>(a)</sup> applies with respect to the discharge by the FCA of its functions under these Regulations as if in that Part—

- (a) each reference to the 2000 Act included a reference to these Regulations;
- (b) each reference to an authorised person were a reference to a current account authorised person;
- (c) each reference to the PRA were omitted;
- (d) each reference to either regulator were a reference to the FCA only, and
- (e) each of sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A), 165C (orders under section 165A(2)(d)), 169 (investigations etc. in support of overseas regulator), 169A (support of overseas regulator with respect to financial stability) and 173 (powers of persons appointed as a result of section 168(2)) were omitted.

(2) With respect to the discharge by the FCA of its functions under these Regulations—

- (a) section 165 (regulators’ power to require information: authorised persons etc.) of the 2000 Act applies as if in subsection (7), paragraphs (b) to (d) were omitted;
- (b) section 166 (reports by skilled persons) of the 2000 Act applies as if subsections (10) and (11) were omitted;
- (c) section 166A (appointment of skilled person to collect and update information) of the 2000 Act applies—
  - (i) as if each reference to a requirement with respect to information included a reference to a relevant requirement with respect to information, and
  - (ii) as if subsection (10) were omitted;
- (d) section 167 (appointment of persons to carry out general investigations) of the 2000 Act applies as if—
  - (i) in paragraphs (a) and (c) of subsection (1) the words “a recognised investment exchange or” were omitted;
  - (ii) in paragraph (a) of subsection (1) the words “or of an appointed representative” were omitted;
  - (iii) in subsection (4) the words “(or appointed representative)” were omitted;
  - (iv) in subsection (5A), paragraphs (a) and (c) and in paragraph (b) the words “or the PRA” were omitted, and
  - (v) subsection (6) were omitted;
- (e) section 168 (appointment of persons to carry out investigations in particular cases) of the 2000 Act applies as if—
  - (i) in subsection (1) for paragraph (b) the following were substituted—

“(b) a current account authorised person may have contravened the prohibition imposed by section 40 of the Immigration Act 2014 or any requirement imposed by or under the Immigration Act 2014 (Bank Accounts) Regulations 2014.”;
  - (ii) in subsection (3) for “investigating authority” the term “FCA” were substituted, and

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<sup>(a)</sup> Part 11 is amended by paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, S.I. 2001/1090, S.I. 2007/126, S.I. 2011/1043, S.I. 2012/2554 and S.I. 2013/1773. Other amendments are not relevant here.

- (iii) subsections (2), (4), (5) and (6) were omitted;
- (f) section 170 (investigations: general) of the 2000 Act applies as if—
  - (i) in subsection (1) “or (5)” were omitted;
  - (ii) in subsection (3)(a) “or (4)” were omitted;
  - (iii) subsection (3)(b) and the preceding “; or” were omitted; and
  - (iv) for subsection (10) the following were substituted—
    - “(10) “Investigating authority”, in relation to an investigator, means the FCA.”;
- (g) section 171 (powers of persons appointed under section 167) of the 2000 Act applies as if subsections (3A) and (7) were omitted;
- (h) section 172 (additional power of persons appointed as a result of section 168(1) or (4)) of the 2000 Act applies as if in subsection (4) “or (4)” were omitted;
- (i) section 174 (admissibility of statements made to investigators) of the 2000 Act applies as if in subsection (5) “, 173” were omitted;
- (j) section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted;
- (k) section 176 (entry of premises under warrant) of the 2000 Act applies as if—
  - (i) in subsection (1) “the Secretary of State,” were omitted and “first or second” were substituted for “first, second or third”;
  - (ii) in subsection (3)(a) “or an appointed representative” were omitted;
  - (iii) subsection (4) were omitted;
  - (iv) in subsection (11)—
    - (aa) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted, and
    - (bb) in paragraph (b) “, 173” were omitted.

## PART 5

### Disciplinary measures and offences

#### **Public censure**

**15.** If the FCA considers that a current account authorised person has contravened a relevant requirement, the FCA may publish a statement to that effect.

#### **Statement of misconduct**

**16.** If the FCA considers that an approved person (“A”) has been knowingly concerned in a contravention by a current account authorised person of a relevant requirement, the FCA may publish a statement to that effect.

#### **Financial penalties**

**17.—(1)** If the FCA considers that a current account authorised person (“P”) has contravened a relevant requirement, it may impose on P a penalty of such amount as it considers appropriate.

(2) If the FCA considers that an approved person (“A”) has been knowingly concerned in a contravention by a current account authorised person of a relevant requirement, it may impose on A a penalty of such amount as it considers appropriate.

(3) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

### **Restrictions on permission to carry on regulated activities**

**18.**—(1) If the FCA considers that a current account authorised person (“P”) has contravened a relevant requirement, it may impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by P as it considers appropriate.

(2) In paragraph (1) above “carrying on a regulated activity” means carrying on a regulated activity under any permission given (or treated as given) by the FCA or PRA or conferred by any provision of the 2000 Act.

(3) The period for which a restriction is to have effect may not exceed 12 months.

(4) A restriction may, in particular, be imposed so as to require P to take, or refrain from taking, specified action.

(5) The FCA may—

(a) withdraw a restriction, or

(b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the regulated activities that P carries on.

(7) Any one or more of the powers under this regulation and regulations 15 to 17 (public censure, statement of misconduct and financial penalties) may be exercised in relation to the same contravention.

### **Suspension of and restrictions on approval to carry on functions**

**19.**—(1) If the FCA considers that an approved person (“A”) has been knowingly concerned in a contravention by a current account authorised person of a relevant requirement, it may—

(a) suspend, for such period as it considers appropriate, any approval of the performance by A of any function to which an approval relates, or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by A of any function to which an approval relates as it considers appropriate.

(2) The period for which a suspension or restriction is to have effect may not exceed two years.

(3) A suspension or restriction may have effect in relation to part of a function.

(4) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.

(5) The FCA may not take action under this regulation after the end of the period of three years beginning with the first day on which the FCA knew that A had been knowingly concerned in a contravention by a current account authorised person of a relevant requirement, unless proceedings in respect of it against A were begun before the end of that period.

(6) For the purposes of paragraph (5)—

(a) the FCA is to be treated as knowing of A’s conduct if it has information from which the conduct can reasonably be inferred, and

(b) proceedings against A in respect of A’s conduct are to be treated as begun when a warning notice is given to A under regulation 24 (requirement to issue warning notice).

(7) In relation to any time while a suspension is in force under paragraph (1)(a) in relation to part of a function, any reference in section 59 (approval for particular arrangements) or 63A (power to impose penalties) of the 2000 Act(a) to the performance of a function includes the performance of part of a function.

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(a) Section 59 is amended by section 14 of and paragraph 3 of Schedule 5 to the Financial Services Act 2012, section 18 of and paragraph 1 of Schedule 3 to the Financial Services (Banking Reform) Act 2013, S.I. 2012/1906 and S.I. 2013/1773.

(8) If at any time a restriction imposed under paragraph (1)(b) is contravened, approval under section 59 of the 2000 Act in relation to A is to be treated for the purposes of sections 59 and 63A of the 2000 Act as if it had been withdrawn at that time.

### **Misleading the FCA**

**20.**—(1) A person must not, for the purposes of compliance or purported compliance with a relevant requirement, other than this regulation, knowingly or recklessly give the FCA information which is false or misleading in a material particular.

(2) A person must not provide information to another person—

- (a) knowing, or
- (b) being reckless as to whether,

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, the FCA in connection with the discharge of its functions under these Regulations.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

(4) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

**21.**—(1) A person who is convicted of an offence under regulation 20 (misleading the FCA) is not subsequently liable to a penalty under regulation 17 (financial penalties) in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 17 is not subsequently liable for an offence under regulation 20 in respect of the same acts or omissions that constituted the contravention of a relevant requirement for the purposes of that regulation.

### **Proceedings for offences**

**22.**—(1) Proceedings for an offence under regulation 20 (misleading the FCA) may be instituted—

- (a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions, or
- (b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under regulation 20, the FCA must comply with any conditions or restrictions imposed in writing by the Treasury in relation to such proceedings.

### **Proceedings against unincorporated bodies**

**23.**—(1) Proceedings for an offence under regulation 20 (misleading the FCA) alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on a partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

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Section 63A was inserted by section 11 of the Financial Services Act 2010 and is amended by paragraph 8 of Schedule 5 to the Financial Services Act 2012 and section 28 of and paragraph 4 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.



(3) Rules of court relating to the service of documents are to have effect as if a partnership or association were a body corporate.

(4) In proceedings for an offence brought against a partnership or association—

- (a) section 33 (procedure on charge of offence against corporation) of the Criminal Justice Act 1925<sup>(a)</sup> and section 46 (corporations) of and Schedule 3 to the Magistrates' Courts Act 1980<sup>(b)</sup> apply as they do in relation to a body corporate;
- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995<sup>(c)</sup> apply;
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945<sup>(d)</sup> and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(e)</sup> apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 20 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
- (b) against an individual at any place where that individual is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

## PART 6

### Notices

#### Requirement to issue warning notice

**24.**—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 15 (public censure) or 16 (statement of misconduct),
- (b) impose a penalty under regulation 17 (financial penalties),
- (c) impose a restriction on a permission under regulation 18 (restrictions on permission to carry on regulated activities), or
- (d) suspend or restrict an approval under regulation 19 (suspension of and restrictions on approval to carry on functions),

it must give the person concerned a warning notice.

(2) The warning notice must set out the following—

- (a) in the case of a statement under regulation 15 or 16, the terms of the proposed statement;
- (b) in the case of a penalty under regulation 17, the amount of the proposed penalty;
- (c) in the case of a restriction on a permission under regulation 18, the restriction and the period for which it is to have effect;
- (d) in the case of a suspension or restriction on an approval under regulation 19, the suspension or restriction and the period for which it is to have effect.

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(a) 1925 c.86. Section 33 is amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c.23), Schedule 8, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(b) 1980 c.43. Schedule 3 is amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4.

(c) 1995 c.46. Section 70 is amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.

(d) 1945 c.15.

(e) S.I. 1981/1675.

### **Requirement to issue decision notice**

**25.**—(1) If, having considered any representations made in response to the warning notice, the FCA decides to—

- (a) publish a statement under regulation 15 (public censure) or 16 (statement of misconduct);
- (b) impose a penalty under regulation 17 (financial penalties);
- (c) impose a restriction on a permission under regulation 18 (restriction on permission to carry on regulated activities);
- (d) suspend or restrict an approval under regulation 19 (suspension of and restriction on approval to carry on functions),

it must without delay give the person concerned a decision notice.

(2) The decision notice must set out the following—

- (a) in the case of a statement under regulation 15 or 16, the terms of the statement;
- (b) in the case of a penalty under regulation 17, the amount of the penalty;
- (c) in the case of a restriction on a permission under regulation 18, the restriction and the period for which it is to have effect;
- (d) in the case of a suspension or restriction on an approval under regulation 19, the suspension or restriction and the period for which it is to have effect.

### **Notices: other interested parties and third party rights**

**26.**—(1) Where the FCA proposes to suspend or restrict an approval under regulation 19 (suspension of and restriction on approval to carry on functions), a warning notice and decision notice must also be given to each of the other interested parties.

(2) “Other interested parties” has the meaning given in section 67(9) (disciplinary measures: procedure and right to refer to Tribunal) of the 2000 Act<sup>(a)</sup>.

(3) After a statement under regulation 15 (public censure) or 16 (statement of misconduct) is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) (third party rights) of the 2000 Act<sup>(b)</sup> (as applied by regulation 29 (application of Part 26 of the 2000 Act)).

### **Referral to Tribunal**

**27.** If the FCA decides to—

- (a) publish a statement under regulation 15 (public censure) or 16 (statement of misconduct);
- (b) impose a penalty under regulation 17 (financial penalties);
- (c) impose a restriction on a permission under regulation 18 (restriction on permission to carry on regulated activities); or
- (d) impose a suspension or restriction on an approval under regulation 19 (suspension of and restriction on approval to carry on functions),

the person concerned may refer the matter to the Tribunal.

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(a) Section 67(9) is amended by paragraph 15 of Schedule 5 to the Financial Services Act 2012.  
(b) Section 393(4) is amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

## Statements of policy

**28.**—(1) Sections 69 (statements of policy) and 70 (statements of policy: procedure) of the 2000 Act(**a**) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties, suspensions or restrictions under regulations 17(2) (financial penalties) and 19 (suspension of and restriction on approval to carry on functions);
- (b) the amount of penalties imposed under regulation 17(2); and
- (c) the period for which suspensions or restrictions imposed under regulation 19 are to have effect;

as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under section 66 (disciplinary powers) of the 2000 Act(**b**).

(2) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the 2000 Act(**c**) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties or restrictions under regulations 17(1) (financial penalties) and 18 (restrictions on permission to carry on regulated activities);
- (b) the amount of penalties imposed under regulation 17(1); and
- (c) the period for which restrictions imposed under regulation 18 are to have effect;

as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under Part 14 (disciplinary measures) of the 2000 Act(**d**).

## Application of Part 26 of the 2000 Act

**29.**—(1) Part 26 (notices) of the 2000 Act(**e**) applies with respect to the discharge by the FCA of its functions under regulations 24 (requirement to issue warning notice), 25 (requirement to issue decision notice) or 26 (notices: other interested parties and third party rights) as if references to the PRA in that Part were omitted.

(2) With respect to the discharge by the FCA of its functions under regulations 24, 25 or 26—

- (a) section 387 (warning notices) of the 2000 Act applies as if subsections (1A) and (3A) were omitted;
- (b) section 388 (decision notices) of the 2000 Act applies as if subsections (1A) and (2) were omitted;
- (c) section 390 (final notices) of the 2000 Act applies as if—
  - (i) subsections (6) and (10) were omitted;
  - (ii) in subsection (7) for “In any other case, the” the word “The” were substituted, and
  - (iii) in subsection (8) the words “or (6)(c)” were omitted;
- (d) section 391 (publication) of the 2000 Act applies as if—

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- (a) Section 69 is amended by paragraph 10 of Schedule 2 to the Financial Services Act 2010, paragraph 17 of Schedule 5 to the Financial Services Act 2012, and paragraph 7 of Schedule 3 to the Financial Services (Banking Reform) Act 2013. Section 70 is amended by paragraph 18 of Schedule 5 to the Financial Services Act 2012.
  - (b) Section 66 is amended by section 12 of and paragraph 8 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 5 to the Financial Services Act 2012, sections 28 and 32 of and paragraph 5 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773.
  - (c) Section 210 is amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 is amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.
  - (d) Part 14 is amended by sections 9 and 10 of and Schedule 2 to the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1773.
  - (e) Part 26 is amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, S.I. 2005/381, S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/534, S.I. 2010/22, S.I. 2010/747, S.I. 2012/916, S.I. 2013/1388 and S.I. 2013/3115.

- (i) subsections (1), (1ZB), (5), (5A), (6A), (7A), (7B), (8), (10) and (11) were omitted, and
- (ii) for subsection (1ZA) were substituted—
  - “(1ZA) Neither the FCA nor a person to whom a warning notice is given or copied may publish the notice or any details concerning it.”;
- (e) sections 393 (third party rights) and 394 (access to FCA or PRA material) of the 2000 Act apply in respect of a warning notice or a decision notice given in accordance with these Regulations;
- (f) Section 395 (the FCA’s and PRA’s procedures) of the 2000 Act applies as if—
  - (i) for subsection (1) there were substituted—
    - “(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give a warning notice or decision notice.”
    - ;
  - (ii) for subsection (2) there were substituted—
    - “(2) That procedure must be designed to secure, among other things, that a decision falling within subsection (1) is taken—
      - (a) by a person not directly involved in establishing the evidence on which the decision is based, or
      - (b) by 2 or more persons who include a person not directly involved in establishing that evidence.”;
  - (iii) subsections (3), (4), (9A) and (13) were omitted, and
  - (iv) in subsection (9), the words “supervisory notice, or a” and “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)” were omitted.

## PART 7

### The Tribunal

#### **The Tribunal**

**30.**—(1) Part 9 (hearings and appeals) of the 2000 Act<sup>(a)</sup> applies with respect to proceedings pursuant to references to the Tribunal under these Regulations (“relevant proceedings”) as it applies to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

(2) Section 133 (proceedings before the Tribunal: general provision) of the 2000 Act applies in relation to relevant proceedings as if—

- (a) references to decisions included references to decisions of the FCA only, and
- (b) any of the following decisions was a “disciplinary reference” within the meaning of subsection (7A)—
  - (i) a decision to publish a statement under regulation 15 (public censure) or 16 (statement of misconduct),
  - (ii) a decision to impose a penalty under regulation 17 (financial penalties),
  - (iii) a decision to impose a restriction on a permission under regulation 18 (restrictions on permission to carry on regulated activities);

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<sup>(a)</sup> Part 9 is amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22 and S.I. 2013/1388.

- (iv) a decision to impose a suspension of or restriction on an approval under regulation 19 (suspension of and restrictions on approval to carry on functions);
- (3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) of the 2000 Act applies as if—
- (a) for subsection (1) there were substituted—
- “(1) In determining in accordance with section 133(5) (as applied by the Immigration Act 2014 (Financial Services) Regulations 2014) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Immigration Act 2014 (Financial Services) Regulations 2014, have had power to take when giving the notice.”; and
- (b) in subsection (5) the words “or the PRA” were omitted;
- (4) Section 133B (offences) of the 2000 Act applies as if references to decisions included references to decisions of the FCA only.

*Mark Lancaster*  
*David Evennett*

19th November 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision, largely by applying and making provisions corresponding to provisions of the Financial Services and Markets Act 2000 (c. 8) (the “2000 Act”), to enable the Financial Conduct Authority (the “FCA”) to enforce the prohibition in section 40(1) (Prohibition on opening current account for disqualified persons) of the Immigration Act 2014 (c. 22) (the “Act”).

Section 40(1) of the Act prohibits certain banks and building societies (referred to in the Regulations as “current account authorised persons”) from opening current accounts for “disqualified persons”. A person is “disqualified” for the purposes of section 40, per subsections 40(2) and 40(3)(b), (a) if he or she is in the UK, (b) if he or she requires leave to enter or remain in the UK but does not have such leave, and (c) if he or she is a person for whom the Secretary of State considers that a current account should not be opened by a current account authorised person.

Enforcement action may be taken against current account authorised persons and, in certain circumstances, against the approved persons of current account authorised persons (approved persons include for example persons in certain senior management roles).

Part 2 makes provision about the FCA. In particular it provides for the FCA to have certain functions in relation to the supervision of compliance with these Regulations and section 40 of the Act, including with respect to putting in place arrangements designed to enable it to enforce the prohibition in section 40(1) and the requirements of the Regulations, as well as with respect to complaints, penalties and fees. This Part also provides for the FCA to be exempt from damages where it is carrying out its functions under the Regulations.

Part 3 makes provision about reporting and information. It makes provision for record keeping on the part of current account authorised persons, applies reporting obligations to the FCA on the part of current account authorised persons, and provides for the FCA to obtain relevant information from current account authorised persons and from organisations or authorities specified by the Secretary of State (pursuant to section 40(3)(a) of the Act) with whom current account authorised persons are required to check to identify disqualified persons. This Part also applies restrictions on disclosure of relevant information by the FCA.

Part 4 provides for the FCA with investigatory powers by applying certain provisions of Part 11 of the 2000 Act giving the FCA investigatory powers with appropriate modifications.

Part 5 provides for disciplinary measures and offences for breach of the prohibition in section 40 of the Act or the requirements of these Regulations. Regulations 15 and 16 permit the FCA to publish a statement where it considers that a current account authorised person has breached a relevant requirement or where an approved person has been knowingly concerned in such a breach. Regulation 17 provides the FCA with the ability to impose financial penalties for such conduct. Regulations 18 and 19 enable the FCA to restrict permissions under the 2000 Act to carry out activities regulated under that Act and to suspend or restrict approvals of performance of functions controlled under the 2000 Act. Regulation 20 makes it an offence to mislead the FCA. Regulation 21 limits the extent to which a person can be liable for both misleading the FCA (under regulation 20) and to a penalty imposed pursuant to regulation 17. Regulations 22 and 23 make provision for proceedings under regulation 20.

Part 6 sets out procedural requirements to be followed by the FCA when taking disciplinary action under Part 5, including with respect to warning notices and decision notices where the FCA proposes or decides to take disciplinary action and the ability of persons concerned to refer to the Upper Tribunal.

Part 7 applies the provisions in the 2000 Act on references to the Upper Tribunal with appropriate modifications.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.gov.uk](http://www.gov.uk) and is published alongside the Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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