

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION ACT 2014 (CURRENT ACCOUNTS) (EXCLUDED ACCOUNTS AND NOTIFICATION REQUIREMENTS) REGULATIONS 2016

2016 No. 1252

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Part 3 (Access to Services) of the Immigration Act 2014 (c. 22) (“the 2014 Act”) was amended by section 45 of, and Schedule 7 to the Immigration Act 2016 (c. 19) (“the 2016 Act”). The amendments extended the reporting and other obligations of banks and building societies in relation to current accounts operated by or for certain persons who are not lawfully entitled to enter or remain in the United Kingdom.
- 2.2 The purpose of these Regulations is to prescribe: (a) the kinds of current accounts that are excluded from the requirement in section 40A of the 2014 Act (inserted by the 2016 Act) for banks and building societies to undertake immigration checks in relation to such accounts; and (b) the information and manner and form required for banks and building societies to notify the Home Office, following such checks, of accounts they hold for persons who do not possess the necessary leave to enter or remain in the United Kingdom, and as a consequence are “disqualified persons” under the 2014 Act. These Regulations also include provisions to enable the Financial Conduct Authority (‘FCA’) to monitor and enforce the compliance of banks and building societies in respect of breaches of the regime introduced by the 2016 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the Immigration Act 2014 (Current Accounts)(Compliance &c) Regulations 2016, which are subject to the negative resolution procedure.

Other matters of interest to the House of Commons

- 3.2 The territorial application of these Regulations includes Scotland and Northern Ireland.

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 country.
- 4.2 Sections 40, and 41 to 47 prohibit banks and building societies from opening current accounts for persons without leave (if they require it) to enter or remain in the United

Kingdom without first carrying out a status check which indicates that the person in question is not a “disqualified person” (that is, a person for whom the Home Secretary considers a current account should not be opened).

- 4.3 Sections 40A to 40H, which were inserted by the 2016 Act, in addition require banks and building societies 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 bank or building society is a disqualified person, the bank or building society must notify the Home Office, who may then require the bank or building society to close any accounts it holds for that person.
- 4.4 Sections 40A(1) and (4), 40B, 40C(4), 40G(9) and 41 of the 2014 Act provide powers for the Treasury to prescribe various matters in secondary legislation. The powers in sections 40A(4), 40B and 41 are subject to the affirmative resolution procedure, and these Regulations are made in reliance upon them. The other enabling powers are subject to the negative resolution procedure and the related Regulations noted in paragraph 3.1 above are made in reliance upon them.
- 4.5 The affirmative procedure powers enable the Treasury to prescribe: the persons or bodies whose accounts are excluded from such checks (s40A(4)); the information the bank or building society must provide to the Home Office when making a notification (s40B(2)) and the manner and form in which such a notification must be made (s40B(3)); ; and arrangements for monitoring and enforcement of the various statutory requirements by the Financial Conduct Authority (s41).

5. Extent and Territorial Application

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

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

- 7.1 The 2014 Act prohibited banks and building societies (“firms”) from opening all new current accounts for known illegal immigrants. 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 UK, 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 therefore amended the 2014 Act to further curtail access to banking for known illegal migrants. 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 UK; incentivising voluntary departure; and deterring legal migrants from breaching conditions of stay.

- 7.4 The amendments to the 2016 Act require firms to check details of all existing current account holders against the details of known illegal migrants which the Home Office will share with a specified anti-fraud organisation or data-matching authority (in this case Cifas). 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 held with the bank or building society. 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 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 court for a freezing order, or, in the majority of cases, instruct the firm to close any accounts it holds for the illegal migrant as soon as is reasonably practicable.
- 7.5 Firms may delay the closure of accounts for a reasonable period (e.g. to recover debt, or deal with affected third parties). Firms will also be able to comply without closing the account if the illegal migrant's continued access to the account can be prevented. Firms are required to report on the steps they have taken to comply with the closure requirement to the Home Office.
- 7.6 The amendments made by the 2016 Act delegated certain powers to HM Treasury to make Regulations that determine which accounts are excluded from the scope of the provisions, and specific details of how firms comply in practice.
- 7.7 These Regulations provide as follows.
- 7.8 Current accounts that are operated by or for individuals that are acting for the purposes of a trade, business or profession are excluded from the scope of the provisions introduced by the 2016 Act. This means that firms are not required to make a check on all current accounts, for example corporate or business accounts. This approach is intended to be targeted and proportionate and to take into account the existing prohibitions in the 2014 Act. After making the check on personal current accounts, firms will report any accounts held by a disqualified person to the Home Office.
- 7.9 When notifying the Home Office of such accounts, firms are required by the Regulations to include the following information in their notification: the date the check was carried out, the name, address and date of birth of the disqualified person, the type and current balance of each account held, a statement as to whether the disqualified person is the sole account holder, joint account holder, a signatory to the account, or a beneficiary to the account, and information about regular payments of over £200 into accounts where the disqualified person is the sole or joint account holder. This information allows the Home Office to confirm the match and make a decision about whether to apply to the court for a freezing order or instruct the firm that it is under a duty to close accounts. The payments threshold is intended to ensure that the Home Office are able to identify significant patterns of payments that may constitute evidence of illegal working.
- 7.10 The notifications between firms and the Home Office are to be conducted by means of a secure website provided by the Home Office for this purpose.

7.11 These Regulations also enable the FCA to monitor and enforce the compliance of banks and building societies in respect of breaches of the regime introduced by the 2016 Act. This mirrors the existing role of the FCA as regards the previously-existing restrictions on opening accounts set out in the 2014 Act.

7.12 The Regulations will come into force on 30th October 2017.

Consolidation

7.13 There are no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 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 these instruments. This consultation informed the policy decisions made in the regulations.

9. Guidance

9.1 The FCA does not intend to provide guidance or additional rules with respect to the relevant additional sections of the Act or this order at this time. The FCA will, however, signpost firms to additional sources of information where possible and will work with industry and trade associations to assist banks and building societies in complying with their obligations under the Act. The Home Office and the HM Treasury will also continue to work with industry and trade associations to assist banks and building societies in preparation for implementation of the regime.

10. Impact

10.1 The impact on business, charities and voluntary bodies is estimated to be an annual equivalent net cost of £0.4m.

10.2 The public sector ongoing costs include data provision (a list of known illegal migrants to Cifas), checking notifications and data sent back to the Home Office, reporting, court orders and legal fees. The total public sector ongoing costs are estimated to be between £0.0 million (PV) and £0.3 million (PV) over 10 years, with a central estimate of £0.1 million (PV).

10.3 A final stage Impact Assessment is submitted with this memorandum, and was sent to the Regulatory Policy Committee on 11 October 2016. This Impact Assessment was given a Green Opinion by the RPC on 18 November 2016. This is published on the legislation.gov.uk website. This Impact Assessment is an update of the final stage Impact Assessment which was prepared for the measure in the primary legislation, which received a Green opinion from the RPC in August 2015.

11. Regulating small business

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

12. Monitoring & review

12.1 Section 45 of the 2016 Act sets out that the Secretary of State must review the operation of the measures, prepare a report of the review, and lay a copy of the report before Parliament before the end of 5 years, beginning with the day in which the measures come fully into force.

12.2 HM Treasury and the Home Office will continue to work closely with the FCA, given its responsibility for monitoring banks' and building societies' compliance with their obligations under the Act.

13. Contact

13.1 The Correspondence and Enquiry Unit at HMT (Telephone: 0207 270 5000 or email: public.enquiries@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.