
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Immigration Act 2014 (Bank Accounts) Regulations 2014

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(1) to the performance of a function includes the performance of part of a function.

(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

(1) 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. 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.

(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.

(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⁽²⁾ and section 46 (corporations) of and Schedule 3 to the Magistrates' Courts Act 1980⁽³⁾ apply as they do in relation to a body corporate;

(2) 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.

(3) 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.

- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ apply;
 - (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945⁽⁵⁾ and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981⁽⁶⁾ 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.

(4) 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.

(5) 1945 c.15.

(6) S.I. 1981/1675.