

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2014 (SPECIFIED ANTI-FRAUD
ORGANISATION) ORDER 2014

2014 No. 1798

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 The Order specifies CIFAS as the anti-fraud organisation with which banks and building societies will be required to undertake an immigration status check before opening current accounts. The Home Office will forward data about individuals who are known to be in the UK unlawfully and whom the Secretary of State has decided should not be permitted to open a current account, and so are “disqualified persons” to CIFAS. Banks and building societies will be required to make an immigration status check with CIFAS, and if the check shows the applicant is a disqualified person, the bank or building society will be obliged to refuse the application by the terms of the Immigration Act 2014 (“the 2014 Act”).

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

3.1 None.

4. **Legislative Context**

4.1 The Order is being made to enable the sections in the 2014 Act which prohibit banks and building societies from opening current accounts for known illegal migrants to take effect. Those institutions cannot open a current account unless they have carried out an immigration status check which indicates the applicant is not a disqualified person as defined by the 2014 Act.

4.2 They should do so by checking with a specified anti-fraud organisation or a specified data-matching authority whether the applicant is disqualified. The Home Office will forward data to that organisation or authority of persons who are disqualified from opening an account. This data will concern individuals who do not have leave to enter or remain in the United Kingdom and have exhausted the immigration process such that they are liable to removal from the country.

4.3 The organisation or authority is to be specified by means of an Order made by the Secretary of State, and the purpose of this Order is to specify CIFAS as the relevant organisation.

4.4 CIFAS is a leading anti-fraud organisation which has already demonstrated through practice that it has the capability to meet the demands that will be placed on it once the checking of applications becomes mandatory. The Home Office currently works closely with CIFAS to which it sends details of immigration offenders, and these are checked by many financial institutions on a voluntary basis.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

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

7. Policy background

7.1 Part 3 of the 2014 Act is concerned with powers to regulate migrants' access to services. It includes provisions on residential tenancies, access to health services, driving licences, illegal working and access to bank accounts.

7.2 The intention of this part of the Act is to ensure known illegal migrants are unable to open bank accounts, which will make it more difficult for them to access other lines of credit or other types of loans which rely on a current account to make repayments, since current accounts are a gateway product to other banking products and services. This will in turn assist in preventing illegal migrants from building up a credit history and unlawfully establishing a life in the UK.

7.3 In conjunction with other measures, this is intended to deter illegal migration into this country, and to encourage those who are already here to leave. The deterrent effect of the measure cannot be quantified. The benefits of this measure will obtain as a result of a cumulative impact of the Immigration Act and wider Government policy, rather than this measure in isolation.

7.4 There has been relatively little public interest in this measure compared with other provisions in the 2014 Act. Individuals who are refused a current account as a result of this legislation will be unable to access credit and loans, obtain mortgages and run businesses, but they will still be able to use cash to feed, clothe and accommodate themselves.

7.5 When the policy was under consideration the Government considered whether a voluntary agreement or industry guidance would be more effective in meeting the objectives. After consulting with members of the financial services industry it concluded legislation was the only option that would ensure the objectives were met and provide the legal certainty needed.

7.6 CIFAS is a leading not for profit anti-fraud organisation with a high reputation in the financial services industry; most major financial service

providers are members of the organisation and have access to its anti-fraud services. CIFAS already works closely with the Home Office, which forwards to it details of migrants known to be in the UK unlawfully who have exhausted the immigration process. CIFAS members currently can take this information into account when deciding whether to provide financial services to any of those individuals who have applied for their products. Such individuals could constitute a financial risk because they may be removed at any time.

7.7 The appointment of CIFAS as the specified anti-fraud organisation for the purposes of the 2014 Act provisions therefore constitutes an extension of the current arrangements which enable its members to check the immigration status of applicants on a voluntary basis. CIFAS is prepared to offer a bespoke service to non-members who need access to the immigration data.

7.8 The provisions in the Act are flexible and while there is only the intention to appoint CIFAS at present, multiple providers could be specified in the future if it were to be considered appropriate.

8. Consultation outcome

8.1 No consultation was considered to be necessary for the appointment of CIFAS, which is one aspect of the financial services clauses but not a key part of the policy.

9. Guidance

9.1 This Order does not require guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. Those financial organisations which are affected by the clauses will need to carry out an immigration status check with whichever organisation or authority has been specified.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The question of whether CIFAS should remain specified, or whether one or more additional providers should be specified at some future stage in addition to CIFAS, will be kept under continuing review by the Home Office.

13. Contact

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instrument.