

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION ACT 2014 (BANK ACCOUNTS) REGULATIONS 2014**

**2014 No. 3085**

**1.** This explanatory memorandum has been prepared by HM Treasury (“the Treasury”) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1. The purpose of this instrument is to enable the Financial Conduct Authority (“FCA”) to make arrangements for monitoring and enforcing compliance with the prohibition on banks and building societies opening current accounts for disqualified persons imposed by section 40 of the Immigration Act 2014 (“the Act”).

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

3.1. None.

**4. Legislative Context**

4.1. Section 41 of the Act provides that the Treasury may make regulations to enable the FCA to make arrangements for monitoring and enforcing compliance with the prohibition imposed on banks and building societies by section 40 of the Act. Section 40 prohibits banks and building societies from opening current accounts for illegal migrants who are designated by the Secretary of State as “disqualified persons” (defined in subsection 40(3)(b) of the Act).

4.2. The purpose of this instrument is to enable the FCA to monitor and enforce the compliance of banks and building societies with the prohibition imposed by section 40 of the Act.

**5. Territorial Extent and Application**

5.1. This instrument applies to all of 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 Immigration Act 2014 (Bank Accounts) Regulations 2014 are compatible with the European Convention on Human Rights.

## 7. Policy background

- 7.1. The Government has sought to ensure that known illegal migrants are not able to access banking products or services in the UK. This instrument is being brought forward in order to give effect to that policy and forms part of a series of measures being introduced by the Government which are designed to reduce the attractiveness of the UK as a destination for those intending to work or stay illegally.
- 7.2. Section 40 of the Act prohibits banks and building societies from opening current accounts for “disqualified persons”. It is anticipated that such persons will be identified by banks and building societies by carrying out checks of the credentials of applicants for current accounts with a specified anti-fraud organisation or data-matching authority (within the meaning of section 40(4) of the Act). The Government intends to specify CIFAS for this purpose.
- 7.3. For the purposes of monitoring and enforcing compliance with the section 40 prohibition, this instrument applies, with modifications, a number of powers conferred on the FCA by the Financial Services and Markets Act 2000 (“FSMA”). In particular:
  - 7.3.1. Regulations 6, 7 and 8 apply provisions of Schedule 1ZA to FSMA with respect to penalties, fees and the exemption from liability in damages of the FCA.
  - 7.3.2. Regulation 12 applies sections 348, 349 and 352 of FSMA with respect to restrictions on disclosure of information.
  - 7.3.3. Regulation 13 applies the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) with respect to disclosure of confidential information.
  - 7.3.4. Regulation 14 applies Part 11 of FSMA with respect to investigatory powers.
  - 7.3.5. Regulation 28 applies sections 69, 70, 210 and 211 of FSMA with respect to statements of policy.
  - 7.3.6. Regulation 29 applies Part 26 of FSMA regarding notices.
  - 7.3.7. Regulation 30 applies Part 9 of FSMA regarding recourse to the Tribunal.
- 7.4. The remaining regulations are free-standing, although in several instances these also draw on related provisions of FSMA. More particularly:
  - 7.4.1. Regulations 1 and 2 are concerned with citation, commencement and interpretation.

- 7.4.2. Regulation 3 sets out principles to which the FCA must have regard in discharging its functions under these regulations.
- 7.4.3. Regulation 4 requires the FCA to maintain relevant monitoring and enforcement arrangements.
- 7.4.4. Regulation 5 requires the FCA to maintain and publish details of complaints arrangements for the submission of complaints about breaches by banks or building societies of their obligations under section 40 of the Act or these regulations.
- 7.4.5. Regulation 9 makes provision for reporting requirements for banks and building societies, enabling the FCA to require such institutions to provide it with such information as it may direct with respect to their compliance or non-compliance with the requirements of section 40 of the Act or these regulations.
- 7.4.6. Regulation 10 requires banks and building societies to retain records relevant to demonstrating their compliance or non-compliance with the requirements of section 40 of the Act or these regulations for at least five years, dating from the records' creation.
- 7.4.7. Regulation 11 makes provision for an anti-fraud organisation or data-matching authority specified by the Secretary of State under section 40(3) of the Act to share information with the FCA, and enables the FCA to apply disciplinary measures where such an organisation or authority fails to comply with its obligations under these regulations.
- 7.4.8. Regulations 15 to 23 make provision for disciplinary measures and offences, including: public censure, statements of misconduct, financial penalties, restrictions on permissions and approvals, an offence of misleading the FCA, restrictions on penalties, proceedings for offences and proceedings against unincorporated bodies.
- 7.4.9. Regulations 24 to 27 make provision for notices, including with respect to the issuance of warning notices, decision notices, notices to third parties and the right of referral to the Tribunal.

## **8. Consultation outcome**

- 8.1. The Government undertook informal consultation with the banking sector prior to the introduction of the Act, and further informal consultation with the banking sector was carried out during the drafting of this instrument.

## **9. Guidance**

- 9.1. The FCA has indicated in Quarterly Consultation Paper CP14/8 that it does not intend to provide guidance or additional rules with respect to the relevant sections of the Act or this order at this time. The FCA will, however, signpost firms to additional sources of

information and will work with industry and trade associations to assist banks and building societies in complying with their obligations under the Act.

## **10. Impact**

- 10.1. A separate impact assessment has not been prepared for this instrument.
- 10.2. The impacts are addressed in the impact assessment Immigration Act: Access to Banking which is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1. The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1. The Government keeps all legislation under review.
- 12.2. HMT will work closely in this regard with the FCA, given the FCA's responsibility for monitoring banks' and building societies' compliance with their obligations under section 40 of the Act.

## **13. Contact**

The Correspondence and Enquiry Unit at HMT (Tel: 0207 270 5000 or email: [public.enquiries@hmtreasury.gsi.gov.uk](mailto:public.enquiries@hmtreasury.gsi.gov.uk)) can answer queries regarding this instrument.