

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2014 (CURRENT ACCOUNTS) (COMPLIANCE &C)
REGULATIONS 2016

2016 No. 1073

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 These Regulations prescribe certain requirements (as to information, manner and form and timing) for the purposes of the statutory regime applicable to current accounts set out in sections 40A to 40H of the 2014 Act (as inserted by the 2016 Act). These include a requirement on banks and building societies for immigration checks to be carried out on a quarterly basis; the information that the Home Office must provide to a bank or a building society to enable it to comply with its duty to close accounts (under section 40G of the Act); and a requirement on banks and building societies to inform the Home Office of the steps it has taken to comply with that duty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

- 3.1 This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016, which are subject to the affirmative resolution procedure.

Other matters of interest to the House of Commons

- 3.1 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 section 40A(4), 40B and 41 are subject to the affirmative resolution procedure. The other enabling powers are subject to the negative resolution procedure, and these Regulations are made in reliance upon them. The related Regulations referred to in paragraph 3.1 above are made in reliance upon the affirmative resolution powers.
- 4.5 The negative resolution powers enable the Treasury to prescribe: the frequency with which immigration checks must be carried out (s40A(1)); ; the information the Home Office must provide the bank or building society when notifying it of its duty to close an account and the manner and form of that notification (s40C(4)); and the frequency with which, and form and manner in which the bank or building society must provide the Home Office with information about its compliance with the duty to close (s40G(9)).

5. Extent and Territorial Application

- 5.1 These Regulations extend to all of the United Kingdom.
- 5.2 The territorial application of the Regulations is all of the United Kingdom

6. European Convention on Human Rights

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

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 Firms are required to make an immigration check on at least a quarterly basis. This period was determined to ensure that the measures will have an impact on the disqualified person soon after they become disqualified. A more frequent requirement would be disproportionately burdensome on the banking industry.
- 7.9 After checking the match, if the Home Office decides not to apply for a freezing order in respect of any accounts held for the disqualified person, the Home Office will notify the firm that it is under a duty to close any accounts held for the disqualified person. When doing so, the Home Office will include the name, address and date of birth of each disqualified person that it has been notified of, and a description of the accounts reported.
- 7.10 The firm must notify the Home Office about the steps that it has taken to comply with the account closure duty before the end of the quarter in which the steps were taken, except information about steps taken in the final two weeks of the quarter, which may be provided in the next quarter. This is intended to ensure prompt notification to the Home Office, and to provide industry with additional time to notify the Home Office of steps taken near the end of the quarter.
- 7.11 The notifications between firms and the Home Office outlined are to be conducted by means of a secure website provided by the Home Office for this purpose.
- 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 is awaiting a RPC opinion. The submitted assessment is an update of the final stage Impact Assessment which was prepared for the measure in the primary legislation. This Impact Assessment received a Green opinion from the Regulatory Policy Committee in August 2015, and is published on the legislation.gov.uk website.

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.