

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2016 (CONSEQUENTIAL AMENDMENTS)
REGULATIONS 2017

2017 No. 931

1. Introduction

- 1.1 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 Schedule 7 to the Immigration Act 2016 (“the 2016 Act”) inserted a new section 40G into the Immigration Act 2014 (“the 2014 Act”), establishing a duty on banks and building societies (“firms”) to close a current account operated by or for a person who is disqualified by virtue of their immigration status in certain circumstances.
- 2.2 This statutory instrument makes a consequential amendment to regulation 26(2) of the Payment Accounts Regulations 2015 (“the 2015 Regulations”) to make clear that a designated credit institution may close a payment account with basic features where the firm is required to close the account in accordance with section 40G of the 2014 Act.

3. Matters of special interest to Parliament

Other matters of interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not yet 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 United Kingdom.
- 4.2 Section 40 prohibits firms from opening current accounts for disqualified persons without first carrying out a status check which indicates that the person in question is not a “disqualified person” (a disqualified person is defined in section 40 as a person in the United Kingdom who requires leave to enter or remain in the United Kingdom but does not have it and for whom the Secretary of State considers that a current account should not be opened by a bank or building society). Sections 40A to 40H, which were inserted by the 2016 Act, require firms 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 firm is a disqualified person, the firm

must notify the Home Office, who may then require the firm to close any accounts it holds for that person.

- 4.3 The 2015 Regulations implement the EU's Payment Accounts Directive (Directive 2014/92/EU) ("the Directive"). The Directive sets common regulatory standards that EU Member States are required to meet in order to, among other things, ensure access to payment accounts with basic features for EU residents.
- 4.4 Part 4 of the 2015 Regulations requires credit institutions that have been designated by the Treasury in accordance with the procedure set out in Schedule 6 to offer eligible consumers a payment account with basic features. Regulation 19 sets out the nature of the services that will be offered as part of a payment account with basic features, and regulation 23 prescribes the eligibility criteria. Regulation 25 specifies the circumstances in which a firm must refuse to open a payment account with basic features. Regulation 26 specifies the only circumstances in which a firm may close an account once it has been opened.
- 4.5 This instrument gives effect to the duty set out in sections 40A to 40H of the 2014 Act, by amending the list of specified circumstances in regulation 26 of the 2015 Regulations where an account may be closed.

5. Extent and Territorial Application

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

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The 2014 Act prohibited firms from opening new current accounts for disqualified persons. 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 United Kingdom, 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 amended the 2014 Act to further curtail access to banking for disqualified persons. 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 United Kingdom; incentivising voluntary departure; and deterring legal migrants from breaching conditions of stay.
- 7.4 The amendments to the 2014 Act effected by the 2016 Act require firms to check details of all existing current account holders against the details of disqualified persons which the Home Office will share with a specified anti-fraud organisation or data-matching authority. 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 which they believe are operated by or for a person who they believe to be a disqualified person. 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 firm 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 a court for a freezing order, or, in the majority of cases, instruct the firm to close any accounts it holds for the disqualified person 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 disqualified person'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 2015 Regulations came into force on 18 September 2016, implementing the Directive. The Directive sets common regulatory standards that EU Member States are required to meet in order to: improve the transparency and comparability of fees related to payment accounts that are used for day-to-day payment transactions; facilitate switching of those accounts; and ensure access to payment accounts with basic features.
- 7.7 Under the 2015 Regulations, consumers are eligible for a payment account with basic features if they are legally resident in the European Union and either do not hold a payment account with a United Kingdom credit institution that has at least the features of a payment account with basic features or are ineligible for any payment accounts offered by a designated credit institution that are not payment accounts with basic features.
- 7.8 Firms must still refuse an application to open a payment account with basic features where it would be unlawful to do so, for example where opening the account would be contrary to section 40 of the 2014 Act (prohibition on opening current accounts for disqualified persons).
- 7.9 Firms may only close an existing payment account with basic features under specified circumstances.
- 7.10 The United Kingdom may also identify additional limited and specific cases where a framework contract for a payment account with basic features may be unilaterally terminated by the credit institution. Such cases need to be based on provisions of national law applicable in their territory and aimed at avoiding abuses by consumers of their right to access a payment account with basic features.
- 7.11 The purpose of the consequential amendment to regulation 26 of the 2015 Regulations is to add to the exhaustive list of instances in which it will be permissible for a designated credit institution to close a payment account with basic features in cases where section 40G of the 2014 Act requires the account to be closed.

8. Consultation outcome

- 8.1 In 2014, HM Treasury ran a six-week public consultation on a draft version of the 2015 Regulations. The consultation received 13 responses from large and medium sized payment service providers, trade bodies for payment service providers, and consumer groups. The Government responded formally to the consultation in 2015, a copy of which is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477200/PAD_consultation_responses.pdf .

- 8.2 An additional consultation for this instrument was not considered necessary given the minor and technical nature of the changes.

9. Guidance

- 9.1 No guidance has been prepared specifically on this instrument on the basis that it will not implement a change in policy. The instrument makes only the necessary technical changes to allow firms to comply with their duty to close account(s) upon notification from the Secretary of State.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal

- 10.2 There is no impact on the public sector.

- 10.3 An Impact Assessment has not been prepared specifically for this instrument. An overarching Impact Assessment was submitted with the introduction of the Immigration Act 2016 and is available at the following web address:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482041/2015-11-30_revised_overarching_IA_-_Lords.pdf

- 10.4 An impact statement was submitted with the introduction of the Payment Accounts Regulations 2015 and is available at –

http://www.legislation.gov.uk/ukia/2015/315/pdfs/ukia_20150315_en.pdf

11. Regulating small business

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

12. Monitoring & review

- 12.1 There is a duty on the Secretary of State under section 45 of the 2016 Act to review, and prepare a report for Parliament on, the measures contained in Schedule 7 to the 2016 Act, under which sections 40A to 40H of the 2014 Act were introduced, within five years from the date that the measures come into force in full.

13. Contact

- 13.1 Harriet Rathbone at the Home Office (telephone: 020 7035 0058 or email: harriet.rathbone1@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.