Draft Regulations laid before Parliament under section 74(2) of the Immigration Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

FINANCIAL SERVICES AND MARKETS IMMIGRATION

The Immigration Act 2014 (Bank Accounts) Regulations 2014

Made - - - - [date]

Coming into force - - 12th December 2014

The Treasury, in exercise of the powers conferred by section 41 of the Immigration Act 2014(**1**), make the following Regulations.

In accordance with section 74(2) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Immigration Act 2014 (Bank Accounts) Regulations 2014 and come into force on 12th December 2014.

Interpretation

2. In these Regulations—

"the Act" means the Immigration Act 2014;

"the 2000 Act" means the Financial Services and Markets Act 2000(**2**);

"approved person" means a person in relation to whom the appropriate regulator (within the meaning of section 59(4) of the 2000 Act) has given its approval under section 59 of that Act(**3**);

(**1**) 2014 c.22.
(**2**) 2000 c.8.
(**3**) Section 59 is amended by section 14 of and paragraph 3 of Schedule 5 to the Financial Services Act 2012 (c.21), section 18 of and paragraph 1 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2012/1906 and S.I. 2013/1773.

"authorised person" has the meaning given in section 31(2) of the 2000 Act(**4**);

"current account authorised person" means an authorised person to whom the prohibition in section 40 of the Act applies;

"disqualified person" has the meaning given in section 40(3)(b) of the Act;

"the FCA" means the Financial Conduct Authority;

"the PRA" means the Prudential Regulation Authority;

"regulated activity" means an activity which is a regulated activity for the purposes of the 2000 Act in accordance with section 22 of that Act(**5**);

"relevant requirement" means the prohibition imposed by section 40 of the Act, or any prohibition or requirement imposed on persons other than the FCA by or under these Regulations;

"the Tribunal" has the meaning given in section 417(1) of the 2000 Act(**6**).

PART 2

The FCA

Functions of the FCA

3. In discharging its functions under these Regulations (including its functions under any provision of the 2000 Act as applied by these Regulations), the FCA must have regard to—

(a) the need to use its resources in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on the carrying on of an activity, or on a person other than a disqualified person, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the responsibilities, including those affecting consumers, of the senior management of current account authorised persons in relation to compliance with relevant requirements;

(d) the desirability where appropriate of the FCA exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different current account authorised persons;

(e) the desirability in appropriate cases of the FCA publishing information relating to persons on whom relevant requirements are imposed, or requiring such persons to publish information;

(f) the principle that the FCA should exercise its functions as transparently as possible.

Monitoring and enforcement

4.—(1) The FCA must maintain arrangements designed to enable it to determine—

(a) whether current account authorised persons are complying with any relevant requirements applicable to them, and

(b) whether there has been a contravention of regulation 20 (misleading the FCA).

(**4**) Section 31 is amended by section 11 of the Financial Services Act 2012.
(**5**) Section 22 is amended by section 7 of the Financial Services Act 2012.
(**6**) The definition was inserted by S.I. 2010/22. There are other amendments to section 417(1), but none is relevant here.

(2) The FCA must also maintain arrangements designed to enable it to enforce relevant requirements.

Complaints

5.—(1) The FCA must maintain arrangements designed to enable persons to submit complaints to it alleging that a relevant requirement has been breached by a current account authorised person ("the complaints arrangements").

(2) Up-to-date details of the complaints arrangements must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.

Penalties

6. Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the 2000 Act(**7**) apply with respect to the discharge of the FCA's functions under these Regulations with the following modifications—

(a) the reference to the 2000 Act in each of paragraphs 19, 20(2), 20(3)(b), 20(5)(a), 20(8)(a), 21(1) includes a reference to these Regulations, and

(b) the FCA's enforcement powers referred to in paragraph 20(4) include—

(i) its powers under regulations 15 to 19 (public censure, statement of misconduct etc), and

(ii) its powers with respect to the investigation or prosecution of offences under regulation 20 (misleading the FCA).

Fees

7. Paragraph 23 (fees) of Schedule 1ZA to the 2000 Act applies with respect to the discharge by the FCA of its functions under these Regulations with the following modifications—

(a) the qualifying functions of the FCA referred to in sub-paragraphs (1) and (2) include its functions under these Regulations;

(b) the reference to the 2000 Act in each of sub-paragraphs (7) and (8) includes a reference to these Regulations.

Exemption from liability in damages

8. Paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the 2000 Act applies with respect to the discharge or purported discharge of the FCA's functions under these Regulations with the following modifications—

(a) the reference to the FCA's functions in sub-paragraph (1) includes a reference to its functions under these Regulations, and

(b) the reference in sub-paragraph (2) to sections 166 to 169 includes a reference to those sections as applied by these Regulations.

(**7**) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773. Other amendments are not relevant here.

PART 3

Reporting and information

Reporting requirements

9.—(1) A current account authorised person ("P") must provide the FCA with such information in respect of its compliance or non-compliance with any relevant requirement applicable to it as the FCA may direct.

(2) P must provide the FCA with information required to be given under this regulation at such times, in such form, and verified in such manner, as the FCA may direct.

(3) If at any time P considers that it is unable to comply with a relevant requirement applicable to it, P must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

Record keeping

10.—(1) A current account authorised person ("P") must maintain relevant records in retrievable and legible form for no less than five years from the date on which the records were created.

(2) For the purposes of this regulation, records are relevant where they contain information relevant to demonstrating P's compliance or non-compliance with any relevant requirement applicable to P.

Specified organisations or authorities: information-sharing

11.—(1) An anti-fraud organisation or data-matching authority specified by the Secretary of State under section 40(3) of the Act(**8**) shall give the FCA such information within its possession or under its control in respect of—

(a) disqualified persons, and

(b) status checks carried out by current account authorised persons for the purposes of section 40 of the Act,

as the FCA may direct.

(2) A specified organisation or authority must provide the FCA with information required to be given under this regulation at such times and in such form, and verified in such manner, as the FCA may direct.

(3) Regulations 14 (investigations under Part 11 of the 2000 Act), 15 (public censure), 17 (financial penalties) and 24 to 30 (requirement to issue warning notice etc.) apply with necessary modifications to an anti-fraud organisation or data-matching authority specified by the Secretary of State under section 40(3) of the Act as if such organisation or authority was a current account authorised person.

Restrictions on disclosure of information

12. Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348), and 352 (offences) of the 2000 Act(**9**) apply in relation to the functions of the FCA under these Regulations with the following modifications—

(**8**) See S.I. 2014/22 . See also section 40(4) of the Act for the meaning of "specified".

(**9**) Section 348 is amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013. Section 349 is amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial

(a) each reference to the 2000 Act in those sections includes a reference to these Regulations;

(b) the reference in section 348(5)(d) to sections 166A and 166 of that Act includes a reference to those sections as applied by these Regulations, and

(c) the reference in section 348(6)(b) to a competent person refers to a competent person appointed by the FCA to conduct an investigation under Part XI of the 2000 Act as applied by these Regulations.

Disclosure of confidential information

13. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**10**) apply in relation to the functions of the FCA under these Regulations.

PART 4

Investigatory powers

Investigations under Part 11 of the 2000 Act

14.—(1) Part 11 (information gathering and investigations) of the 2000 Act(**11**) applies with respect to the discharge by the FCA of its functions under these Regulations as if in that Part—

(a) each reference to the 2000 Act included a reference to these Regulations;

(b) each reference to an authorised person were a reference to a current account authorised person;

(c) each reference to the PRA were omitted;

(d) each reference to either regulator were a reference to the FCA only, and

(e) each of sections 165A (PRA's power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A), 165C (orders under section 165A(2)(d)), 169 (investigations etc. in support of overseas regulator), 169A (support of overseas regulator with respect to financial stability) and 173 (powers of persons appointed as a result of section 168(2)) were omitted.

(2) With respect to the discharge by the FCA of its functions under these Regulations—

(a) section 165 (regulators' power to require information: authorised persons etc.) of the 2000 Act applies as if in subsection (7), paragraphs (b) to (d) were omitted;

(b) section 166 (reports by skilled persons) of the 2000 Act applies as if subsections (10) and (11) were omitted;

(c) section 166A (appointment of skilled person to collect and update information) of the 2000 Act applies—

(i) as if each reference to a requirement with respect to information included a reference to a relevant requirement with respect to information, and

(ii) as if subsection (10) were omitted;

Services Act 2012, S.I. 2006/1183, S.I. 2007/1093 and S.I. 2011/1043. Section 352 is amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(**10**) S.I. 2001/2188, amended by S.I. 2001/3437, S.I. 2003/2174, S.I. 2003/2817, S.I. 2005/3071, S.I. 2006/3413, S.I. 2010/1265, S.I. 2012/916 and S.I. 2013/472. Other amendments are not relevant here.

(**11**) Part 11 is amended by paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, S.I. 2001/1090, S.I. 2007/126, S.I. 2011/1043, S.I. 2012/2554 and S.I. 2013/1773. Other amendments are not relevant here.