EXPLANATORY MEMORANDUM TO

THE IMMIGRATION ACT 2014 (BANK ACCOUNTS) (AMENDMENT) ORDER 2014

2014 No. [XXXX]

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 Treasury to specify by way of further order persons or bodies with respect to whose accounts the prohibition set out at subsection 40(1) of the Immigration Act 2014 ("the Act") is not to apply. Section 40 prohibits banks and building societies from opening current accounts for illegal migrants who are designated by the Home Office as "disqualified persons" (defined in subsection 40(3)(b) of the Act).

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

3.1. None

4. Legislative Context

4.1. Section 43(1) of the Act allows the Treasury to by order amend section 40 of the Act so as to provide that the prohibition in section 40(1) is not to apply in the case of an account to be operated (or an account that is operated) by or for a person or body of a specified description. Section 43(2) of the Act further provides that an order made under section 43(1) "may amend a section so that it provides for a matter to be specified in a further order to be made by the Treasury".

4.2. This instrument amends section 40 of the Act by inserting a new subsection (7) providing that the prohibition on opening current accounts for disqualified persons shall not apply in the case of an account to be operated (or an account that is operated) by or for a person or body of a description specified in an order made by the Treasury.

4.3. The Treasury will rely on the new section 40(7) inserted into the Act by this instrument in order to make the Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014.

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) (Amendment) Order 2014 is 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. The present instrument is the first of two designed to ensure that the prohibition in section 40 of the Act is appropriately targeted to current accounts to be operated (or that are operated) by or for charities, consumers or micro-enterprises (as defined in the Immigration Act 2014 (Bank Accounts) (Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014).

8. Consultation outcome

8.1. The Government undertook informal consultation with the banking sector prior to the introduction of the Immigration Act, and further informal consultation with the banking sector on the implementation of the Act and on the drafting of this instrument.

8.2. It is a specific result of the informal consultation with the banking sector on the implementation of the Act that the Government is making this instrument at this time, to provide greater clarity on the types of current accounts that should be captured by the section 40 prohibition.

9. Guidance

9.1. The Financial Conduct Authority ("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.

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. The Treasury will work closely in this regard with the FCA, given its 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) can answer queries regarding this instrument.