EXPLANATORY MEMORANDUM TO

THE IMMIGRATION ACT 2014 (BANK ACCOUNTS) (PROHIBITION ON OPENING CURRENT ACCOUNTS FOR DISQUALIFIED PERSONS) 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 specify the accounts to which the prohibition provided for by subsection 40(1) of the Immigration Act 2014 ("the Act") will not 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. The Treasury is relying on section 13 of the Interpretation Act 1978 to exercise the power to make this Order before section 40(7) comes into force as it is necessary and expedient to do so for the purposes of giving full effect to section 40 of the Act when it comes into force.

4. Legislative Context

4.1. Section 43(1) of the Act allows the Treasury to amend by order 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. In parallel to this instrument, the Treasury will make an order (the Immigration Act 2014 (Bank Accounts) (Amendment) Order 2014) that inserts a new subsection (7) into section 40 of the Act, providing that the prohibition in section 40(1) 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. This instrument is made under the new power provided for in the new subsection 40(7) 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) (Prohibition on Opening Current Accounts for Disqualified Persons) 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 second of two designed to ensure that the prohibition in section 40 of the Act is appropriately targeted at accounts to be operated (or accounts that are operated) by or for "retail banking customers"– that is, "charities", "consumers" or "micro-enterprises", as defined in the instrument. The definitions of these terms set out at Article 3 of the draft Order have been designed to ensure consistency with other elements of the banking conduct regime, where a distinction is drawn between the conduct of banks and building societies with respect to such retail banking customers and other customers such as large corporations.

7.4. In particular, the definitions in Article 3 are substantively the same as those set out in the 2009 Payment Services Regulations (S.I. 2009/209) (the "PSRs"), which implement the 2007 Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council). In the context of the PSRs, these definitions serve to delineate the scope of the "corporate opt-out" which enables banks to treat certain categories of customers differently with respect to payment services. These categories also substantively comprise the definition of "banking customer" for the purposes of the FCA's Banking Conduct of Business Sourcebook, another key element of the banking conduct regime that has been in place since 2009, and which sets out the FCA's expectations for retail banking conduct.

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. HMT 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.