

IMMIGRATION REGULATIONS INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 69 (Statement of policy) as applied by regulation 28(1) of the Immigration Act 2014 (Bank Accounts) Regulations 2014 (“the Immigration Regulations”);
 - (b) section 139A (Power of the FCA to give guidance);
 - (c) section 210 (Statements of policy) as applied by regulation 28(2) of the Immigration Regulations; and
 - (d) section 395 (The FCA’s and PRA’s procedures) as applied by regulation 29 of the Immigration Regulations;
 - (2) the other guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook; and
 - (3) the power of direction in regulation 9(1) of the Immigration Regulations.

Commencement

- B. This instrument comes into force on 12 December 2014.

Amendments to the FCA Handbook

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C

Amendments to material outside the Handbook

- D. The Enforcement Guide (EG) is amended in accordance with Annex D to this instrument.

Notes

- E. In Annex B to this instrument the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Immigration Regulations Instrument 2014.

By order of the Board of the Financial Conduct Authority
11 December 2014

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

Immigration Regulations the Immigration Act 2014 (Bank Account) Regulations 2014.

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, all the text is new and is not underlined.

After SUP 16.18 insert the following new section.

16.19 Immigration Act compliance reporting

Application

- 16.19.1 D (1) This section applies to a *firm* which is subject to the prohibition on opening a current account for a disqualified person in section 40 of the Immigration Act 2014.
- (2) This section does not apply to a *branch* of a *firm* where the *branch* is established outside the *United Kingdom*.

[**Note:** A *firm* is subject to the prohibition in section 40 of the Immigration Act 2014 if it is a “bank” or “building society” for the purposes of section 42 of the Immigration Act 2014.]

Annual compliance reporting

- 16.19.2 D A *firm* must report its compliance with section 40 of the Immigration Act 2014 to the *FCA* annually.

Method for submitting compliance reports

- 16.19.3 D A *firm* must report its compliance in the form specified in *SUP 16 Annex 1AR* using the appropriate online systems accessible from the *FCA*'s website.

Time period for submitting compliance reports

- 16.19.4 D A *firm* which is subject to *SUP 16.7A* (Annual reports and accounts) must report its compliance at the same time that it submits its *annual reports and accounts* to the *FCA*.
- 16.19.5 D A *firm* which is not subject to *SUP 16.7A* (Annual reports and accounts) must report its compliance within four months after its *accounting reference date*.

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

The Financial Services Act 2012 (Consumer Credit) Order 2013	Description	Handbook reference	Decision maker
...			

<u>The Immigration Act 2014 (Bank Account) Regulations 2014</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 24 and 25</u>	<u>where the FCA is proposing or deciding to publish a statement (under regulations 15 or 16) or impose a financial penalty (under regulation 17) or impose a restriction on permission (under regulation 18) or suspend or restrict an approval (under regulation 19)*</u>		<u>RDC</u>

...

Sch 3 Fees and other required payments

...

Sch 3.2G

The FCA's power to impose financial penalties is contained in:	
	...

	the <i>CCA Order</i>
	<u>the <i>Immigration Regulations</i></u>

Sch 4 Powers Exercised

...

Sch
4.2G

	The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
	...
	Article 4 (Statement of policy) of the <i>CCA Order</i>
	<u>Regulation 28 (Statements of policy) of the <i>Immigration Regulations</i></u>
	<u>Regulation 29 (Application of Part 26 of the 2000 Act) of the <i>Immigration Regulations</i></u>

Annex D

Amendments to the Enforcement Guide (EG)

In this Annex, all the text is new and is not underlined.

Insert the following new provisions after EG 19.156.

Immigration Act 2014 (Bank Account) Regulations 2014

- 19.157 The *Immigration Regulations* give the *FCA* investigation and sanctioning powers in relation to the contravention of section 40 of the Immigration Act 2014 (the Immigration Act), as well as the contravention of requirements imposed by, or under, the *Immigration Regulations*.
- 19.158 The *FCA's* approach to taking enforcement action under the *Immigration Regulations* will mirror its general approach to enforcing the *Act*, as set out in *EG* 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
- 19.159 The *Immigration Regulations*, for the most part, mirror the *FCA's* investigative and sanctioning powers under the *Act*. The *FCA* has adopted procedures and policies for the use of those powers that are akin to those it has under the *Act*. Key features of the *FCA's* approach are described below.

Information gathering and investigation powers

- 19.160 The *Immigration Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the relevant provisions of the Immigration Act or the *Immigration Regulations*.
- 19.161 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Immigration Regulations* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the *FCA* expects to carry out a scoping visit early on in the enforcement process. The *FCA's* policy in civil investigations under the *Immigration Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Immigration Regulations

- 19.162 The *RDC* is the *FCA's* decision maker for decisions which require *warning notices* or *decision notices* to be given under the *Immigration Regulations*, as set

out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*.

- 19.163 The *Immigration Regulations* do not require the *FCA* to publish procedures to commence criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act*, as set out in *EG 12*.
- 19.164 The *Immigration Regulations* apply sections 393 and 394 of the *Act* to *warning notices* and *decision notices* given under the *Immigration Regulations* and so require the *FCA* to give third party rights and to give access to material.
- 19.165 The *Immigration Regulations* apply the procedural provisions of Part 9 of the *Act*, as modified by the *Immigration Regulations*, in respect of matters that can be referred to the *Tribunal*. Referral to the *Tribunal* in respect of *decision notices* given under regulation 25(1) of the *Immigration Regulations* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions under the Immigration Regulations

- 19.166 When determining whether to take action to impose a penalty or to issue a public censure under the *Immigration Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5* to *DEPP 6.5B*, *DEPP 6.5D* and *DEPP 6.7*.
- 19.167 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Immigration Regulations* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.168 When determining whether to take action to impose a suspension or restriction under the *Immigration Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of suspension or restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.
- 19.169 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.