



Home Office

**Draft - Immigration Act 2014 Code of Practice:
Freezing Orders (Bank Accounts Measures)**

Archived

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Presented to Parliament pursuant to Section
40F(3)(a) of the Immigration Act 2014 (as amended
by the Immigration Act 2016)

July 2017

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References in this Code

Disqualified person	The definition of 'disqualified person' set out in section 40A(3) of the IA 2014 applies: A 'disqualified person' is a person – <ul style="list-style-type: none">(a) Who is in the United Kingdom,(b) Who requires leave to enter or remain in the United Kingdom but does not have it, and(c) For whom the Secretary of State considers that a current account should not be provided by a bank or building society.
Firm	A bank or building society
FCA	Financial Conduct Authority
Secretary of State	Secretary of State for the Home Department

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Introduction

1. The Immigration Act 2016 includes measures to prevent known illegal migrants from operating banks accounts. To bring these measures into force the Immigration Act 2016 gives HM Treasury powers through secondary legislation regulations, which set out: what type of accounts firms must check; how frequently firms must check; how firms must notify the Home Office about accounts held by illegal migrants, and what the notifications must contain; how the Secretary of State for the Home Office will respond; and how firms will respond regarding their compliance. It also gives the Home Office powers to bring into effect a Code of Practice on orders to freeze accounts.
2. These measures follow on from the banking measures in the Immigration Act 2014, which prohibited firms from opening new current accounts for disqualified persons. However, it is possible that a proportion of firms' existing current accounts, opened before the Immigration Act 2014 came into force, may belong to persons who were never legally resident in the UK. In addition, accounts may be held legally now, but belong to persons who become disqualified persons in the future, for example by remaining in the UK after their leave expires. The Immigration Act 2016 goes further than the Immigration Act 2014 and includes measures to tackle existing accounts held by such persons and sets out how the Government will expect firms to deal with their accounts (by amending the Immigration Act 2014 to include sections containing the new measures).
3. The bank accounts measures which were incorporated in the Immigration Acts of 2014 and 2016 should be seen as part of a wider set of provisions included in those Acts and elsewhere. These are intended to make it difficult for persons who are unlawfully present to carry out functions which will enable them to establish a life in the UK when they do not have a right to do so. The overall intention is that the cumulative effect of these provisions will discourage illegal immigration and deter overstaying.
4. The purpose of this Code is to specify the factors caseworkers acting on behalf of the Secretary of State should consider when deciding whether to apply for a freezing order under section 40C(2) of the Immigration Act 2014 as amended by the Immigration Act 2016, or for the variation or discharge of a freezing order; and the arrangements for keeping a freezing order under review. It is intended to guide caseworkers when considering whether a freezing order should be applied for under section 40D or section 40E of the Immigration Act 2014.
5. The Code should not be regarded as a complete or authoritative statement of the law, which only the courts can give. However, the Code may be used as evidence in legal proceedings and courts will take account of any part of the Code which may be relevant.

6. The Code is made by the Secretary of State under section 40F of the Immigration Act 2014. Section 40F sets out that the Secretary of State must issue a code of practice, which may not be issued before a draft has been laid before Parliament, and which comes into force in accordance with provision contained in regulations made by the Secretary of State.
7. The Code will be reviewed from time to time in accordance with section 40F of the Immigration Act 2014. A review will take place whenever it appears to the Secretary of State that an assessment of how these measures are operating in practice is necessary. Following review the Secretary of State may reissue the Code. A draft of the revised Code will be laid before Parliament before it is reissued. Section 45 of the Immigration Act 2016 also sets out that the Secretary of State must review the operation of the measures introduced by the Immigration Act 2016 and lay a copy of the report before Parliament before the end of five years, after the measures come fully into force.
8. The Code has been drafted to be used by caseworkers acting on behalf of the Secretary of State to assist them with decision making, and it is addressed to them, but it is also intended that it should be used by others who have an interest in the subject. Herewith, references to 'you' refer to caseworkers.

The bank account measures in the Immigration Act 2014

9. Sections 40A to 40H of the Immigration Act 2014 were inserted into that Act by the Immigration Act 2016. They set out how a person who is disqualified from operating an account is identified, and place duties on firms to carry out immigration checks with a specified anti-fraud organisation or data-matching authority in order to ascertain whether holders of current accounts are disqualified.
10. Should a holder of a current account be identified as being disqualified from operating an account by reason of their immigration status, the firm should notify the Home Office. Section 40B of the Immigration Act 2014 sets out that firms will provide information concerning any account which is held with it by the person concerned, not just current accounts. When notifying the Home Office of such accounts, firms are required by the Regulations¹ to include: the date the check was carried out; the name, address and date of birth of the disqualified person; the type and current balance of each account held; a statement as to whether the disqualified person is the sole account holder, joint account holder, a signatory to the account, or a beneficiary to the account; information about regular payments of over £200 into accounts where the disqualified person is the sole or joint account holder; and any further information which the firm

¹ The Immigration Act 2014 (Current Accounts)(Excluded Accounts and Notification Requirements) Regulations 2016; and The Immigration Act 2014 (Current Accounts)(Compliance etcetera) Regulations 2016.

holds and considers to be relevant to the Secretary of State's functions under the Immigration Act 2016.

11. When you receive such a notification, and confirm the individual in question is disqualified, you will either: inform the relevant Immigration Enforcement Officers who may apply for a freezing order for some, depending on the circumstances of the particular case, or all of the accounts; or instruct the firm that they are subject to the duty to close any accounts it holds for that person, as soon as reasonably practicable in accordance with section 40G(2) of the Immigration Act 2014, which are not the subject of an application for a freezing order or subject to separate investigation or action. Firms must close accounts as soon as reasonably practicable. Firms may delay closure for a 'reasonable' period of time to recover debt or manage the impact on third parties. Firms can also comply with the duty without closing the account if they can take steps to prevent the account from being operated by the disqualified person.
12. Firms are required to provide notification of compliance to the Financial Conduct Authority (FCA). The Regulations enable the FCA to supervise compliance in a proportionate way as part of their existing regulatory regime. This mirrors the existing role of the FCA for the Immigration Act 2014. Firms will also be under a legal obligation to report directly to the Home Office about the accounts they find, which will ensure visibility of compliance.

How the bank account measures must operate

13. The Immigration Act 2016 sets out how the bank account measures operate. A firm is required to check details of their current account holders against the details of known illegal migrants – disqualified persons – which the Home Office will share with a specified anti-fraud organisation or data-matching authority. If there is a match the firm is required to notify the Home Office. The purpose of the check is to ascertain whether the account is operated by or for a person who is disqualified from operating an account.
14. The Home Office will only share details of 'disqualified persons' with the specific anti-fraud organisation or data-matching authority. Disqualified persons are known illegal migrants who are liable for removal or deportation from the UK, or who have absconded from immigration control. They have exhausted all appeal rights and the Secretary of State considers they should be denied access to banking services. The Secretary of State retains discretion over whether an individual is considered a disqualified person and therefore has their details shared with firms. This could be, because an individual faces legitimate barriers which prevent them from leaving the UK and it would not be reasonable to deny them access to a current account, for example, because they have a long term or terminal illness and are not removable. Firms will also continue to perform immigration status checks for the purpose of

complying with their duties to verify that applicants for new current accounts are not disqualified under the Immigration Act 2014.

15. Firms must make these checks on at least a quarterly basis, as specified in the Regulations, although they are free to carry out more frequent checks, should they choose to do so.
16. When, as a result of a check, a firm identifies that a current account is operated by a disqualified person, the firm must notify the Home Office as soon as reasonably practicable – as specified in the Regulations – in the prescribed form and manner. To confirm the match, you must then make a secondary check of Home Office records to make certain the individual concerned is disqualified. You will then provide confirmation of a person's status to the firm and instruct on whether the duty to close the account(s) applies. A secure Home Office IT portal will be used as a channel for notifications. For cases that you consider should be subject to an application for a freezing order or are under separate investigation or action, you will provide confirmation on a person's status to the firm and instruct the firm that no further action should be taken as the case will be referred for further investigation by relevant Immigration Enforcement Officers. In these cases, following consideration, Immigration Enforcement Officers will inform firms what action to take.

Freezing orders

17. For cases that you consider should be subject to an application for a freezing order, once you have provided confirmation on a person's status to the firm and instructed the firm that no further action should be taken, you will refer the match to relevant Immigration Enforcement Officers, who may apply to a court for a freezing order in respect of one or more of the accounts held by that person.
18. Using the factors set out below in paragraphs 24 to 33 you will identify and prioritise cases for which application of a freezing order might be appropriate. You will not make the final decision on whether to apply for a freezing order, but you will forward details to the relevant Immigration Enforcement Officers who will make a decision, taking into consideration the factors set out in paragraphs 24 to 33 below.
19. Firms are required by the Regulations to notify the Home Office of prescribed information, including information about regular payments of over £200 into accounts where the disqualified person is the sole or joint account holder. Whether or not a decision is made to apply for a freezing order, if the information provided indicates that payments into accounts could constitute a salary or wages, you will make evidence of this available to Immigration Enforcement Officers to consider whether the person concerned has been working in the UK unlawfully. This information may also be shared with other government departments, law enforcement agencies and other bodies for their functions. Any onward disclosure of

data will be in line with the provisions in the Data Protection Act 1998 and Human Rights Act 1998.

20. If the person is disqualified, but Immigration Enforcement Officers decide not to apply for a freezing order for some or all of the accounts held, because it would not be appropriate in the circumstances of the particular case, it will be the responsibility of the Immigration Enforcement Officers to instruct firms that they are subject to the duty to close any accounts it holds for that person, as soon as reasonably practicable in accordance with section 40G(2) of the Immigration Act 2014. Firms are able to delay closure for a reasonable period to recover debt or manage the effect on third parties. Firms can also comply with the duty without closing the account if they can take steps to prevent the account from being operated by the disqualified person. If an account is closed, any credit balance can be returned to the account holder as usual, in line with individual firms' terms and conditions (unless it is under separate investigation or action).
21. When an application for a freezing order is made the court will grant, or as the case may be, refuse the application. If the application is refused, this will be confirmed by the relevant Immigration Enforcement Officers who will either instruct the firm that it is subject to the duty to close any accounts it holds for that person or inform the firm that it is not subject to the duty to close. For example, in considering a freezing order application, the court process may reveal circumstances about an individual's personal life which results in the Home Office exercising its discretion over whether the individual is considered to be a disqualified person. In these circumstances, the Home Office would instruct the firm that it is not subject to the duty to close any accounts it holds for that person and the individual's details would no longer be shared with firms.
22. Section 40D of the Immigration Act 2014 sets out that a freezing order will prohibit each person or body by or for whom the account is operated from making withdrawals or payments from the account. However, an order may be made subject to a provision for the disqualified person to meet his or her reasonable living expenses and reasonable legal expenses. The court may make whatever incidental or consequential orders it considers to be just, including the level of funds available to meet reasonable living and legal expenses. In the case of joint accounts it may also allow another person or body by or for whom the account is operated to make withdrawals or payments from the account.
23. The Immigration Act 2016 contains provisions for appeals. Both the Home Office and the person whose account is subject to a freezing order are able to appeal against a decision of a court to refuse or grant an order. If a firm closes an account, there is no right to appeal this decision; however, if despite all the checks a person still considers they are lawfully present, they can contact the Home Office so that any error in the Home Office's records can be rectified. The Home Office will be able to correct any error in real time so that the person's details will be immediately removed from the data which is shared with firms.

Factors in deciding whether to apply for a freezing order

24. The Home Office will apply for a freezing order in some cases rather than instructing the firm to close the account, because the balance in those cases is significant - over £1,000, but taking into consideration paragraphs 27 and 28 below, or because the disqualified person is considered to be potentially capable of significant harm, as referenced in paragraphs 29 and 30. In these cases it would not be a sufficient deterrent to close the account and return the balance to the holder. The holder should be deprived of the use of the balance (except for reasonable living and legal expenses) until such time as he or she leaves the UK. Once the disqualified person has left the UK the freezing order will be reviewed by the relevant Immigration Enforcement Officers, and acting on behalf of the Secretary of State, they will apply for the freezing order to be discharged or varied, under section 40D(6) of the Immigration Act 2014.
25. The following factors, as referenced in paragraphs 26-33, should be taken into account when you consider whether to refer a case to Immigration Enforcement Officers for application of a freezing order. You will also consider the subject's previous record of immigration offending, their level of co-operation with the immigration system, and whether any notable difficulty has been encountered in effecting their removal.

Threshold:

26. The Home Office will not usually consider applying for a freezing order if the level of funds in a person's combined bank accounts is less than £1,000. To do so would usually be disproportionate given the administrative and court costs of applying for an order and the need to permit access to funds to permit reasonable living and legal expenses. But there may be exceptions, as detailed in paragraphs 27 and 28.
27. A freezing order will not be sought automatically where the level of funds in a person's combined accounts is over £1,000, but in those cases you will consider the particular circumstances of the case and a decision will be taken, by Immigration Enforcement Officers, on whether it is appropriate to seek a freezing order.
28. The Home Office will retain the discretion to apply for a freezing order where a disqualified person with a level of funds of less than £1,000 is considered to present a high risk of harm or criminality, taking into account the features outlined in paragraphs 29 and 30, in addition to the subject's previous record of immigration offending and any difficulty encountered in effecting their removal.

Harm:

29. A decision on whether to apply for a freezing order should take into account the level of harm which an individual is reasonably suspected to pose, and the risk involved. In criminal cases a decision to freeze will take

into account all the circumstances of the case, including the nature of the subject's offending, the length of the sentence served, the individual's cooperation with any attempts to re-document them for removal and the likely timetable for securing a subject's removal.

Criminality:

30. You will refer matches involving criminal activity to relevant Immigration Enforcement Officers. However, even in those cases where the offending has been serious it might not be appropriate to freeze a person's account(s) if the offender will be leaving the country promptly at the end of their sentence under an early release scheme.
31. It should be noted that individuals who have reached the stage at which their details could be shared with the specific anti-fraud organisation or data-matching authority are known immigration offenders and will already have had sufficient opportunity to raise any reason why they should be permitted to remain in the UK; they will either not have done so or they have and their application has been refused and all appeal rights have been exhausted.
32. Freezing orders may be applied for in family cases. The family's circumstances and alleged vulnerability will have been taken into account in reaching the decision on whether to grant leave to remain in the country. If a refusal has been sustained there is no reason per se why a freezing order cannot be applied for; however, in making your decision to forward details to the relevant Immigration Enforcement Officers, you will need to consider the factors outlined above on a case by case basis.
33. Freezing orders may be applied in cases where, for example, there is an overdraft in one account and a credit balance in another. When the freezing order is reviewed and discharged by the relevant Immigration Enforcement Officers (if appropriate), they will either instruct the firm that it is subject to the duty to close any accounts it holds for that person or inform the firm that it is not subject to the duty to close. Firms are able to delay closure for a reasonable period to recover debt or manage the effect on third parties. If when a freezing order is discharged the individual is no longer considered to be a disqualified person, their details will no longer be shared with firms.

Applying for a freezing order

34. Once pursuit of a freezing order is confirmed by Immigration Enforcement Officers, they will comply with the designated procedure in force at any given time for making such applications.

Arrangements for keeping a freezing order under review

35. Acting on behalf of the Secretary of State, Immigration Enforcement Officers will review granted freezing orders every six months. The review

will take into consideration all elements of the freezing order decision, including the harm which an individual is reasonably suspected to pose and the risk involved, as well as criminality and vulnerability factors.

36. Immigration Enforcement Officers will also automatically review a freezing order if it can be evidenced that the disqualified person has left the UK.
37. The Home Office will also retain the discretion to carry out reviews more frequently, on a case by case basis.

Applying for variation or discharge of a freezing order

38. If it can be evidenced that the disqualified person has left the UK, the freezing order will be reviewed by relevant Immigration Enforcement Officers, and acting on behalf of the Secretary of State, they will apply for the freezing order to be discharged or varied, under section 40D(6) of the Immigration Act 2014. In these instances, the Home Office will write and notify the court. Even if all parties agree to apply for discharge/variation, the court will have to be satisfied and will make the overall decision.
39. When deciding whether to apply for a freezing order to be varied or discharged, the Home Office will retain the discretion to consider factors on a case by case basis where the disqualified person has not left the UK. For example, this might apply if the funds that are subject to the freezing order are subsequently evidenced as belonging to a non-disqualified person, or if further funds are identified that should be included in the freezing order.
40. If an account has been emptied by withdrawals for reasonable living and legal expenses and the disqualified person is still present in the UK, the Home Office may apply to the court for the freezing order to be discharged. Firms may be instructed by Immigration Enforcement Officers that they are subject to the duty to close any accounts which it holds for that person. Firms are able to delay closure for a reasonable period to recover debt or manage the effect on third parties. Firms can also comply with the duty without closing the account if they can take steps to prevent the account from being operated by, or for, the disqualified person.
41. If the disqualified person makes a further immigration application when a freezing order is in place, this will not automatically mean the Home Office will seek to have the freezing order discharged. The Home Office will retain discretion on a case by case basis to apply to the court for an order to be discharged or varied.

When someone subject to a freezing order leaves the country

42. The purpose of obtaining a freezing order is to incentivise an individual's voluntary departure from the UK, or their cooperation with the removal process. Subject to other legislative requirements and a review of the freezing order, Immigration Enforcement Officers will apply to the court to

discharge a freezing order when a disqualified person whose account(s) have been frozen is known to have left the UK.

43. If an account is frozen, it will be unfrozen by discharge of the court order when the illegal migrant leaves the UK, following a review. Any credit can be returned to the account holder in line with individual firms' terms and conditions.
44. Details of disqualified persons who have been removed from the UK or who are known to have left voluntarily will be retained by the specified anti-fraud organisation or data matching authority for anti-fraud purposes separate to the Immigration Acts 2014 and 2016, but they will be distinguished on those records to indicate that the person is no longer disqualified for immigration purposes. Measures in the Immigration Acts 2014 and 2016 do not create barriers to firms offering services to non-disqualified persons.

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