

# **DORMANT BANK AND BUILDING SOCIETY ACCOUNTS ACT 2008**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS AND SCHEDULES**

#### **Part 1: Transfer of balances in dormant accounts**

#### ***Section 2: Transfer of balances to charities, with proportion to reclaim fund***

29. This section establishes an alternative scheme for smaller banks and building societies which meet the assets test in section 3. According to figures published by the Building Societies Association in November 2008 there were 50 building societies<sup>1</sup> established in the UK which would qualify to participate in this alternative scheme. In addition there are a small number of banks who would qualify. All these institutions may also participate in the main scheme under section 1.
30. *Subsections (1) and (2)(a)* provide that the liability of a smaller bank or building society to pay the balance owed to a customer in relation to a dormant account is extinguished, where an agreed proportion of the balance is transferred to an authorised reclaim fund and the rest is transferred to a charity or charities which meet certain conditions. *Subsection (3)* makes it clear that the balances of deceased persons are within the alternative scheme, and can be transferred in accordance with subsection (1) and reclaimed under subsection (2) by the people to whom the right to payment has passed. “Agreed proportion” is defined by subsection (4) as meaning a proportion agreed between the bank or building society and the reclaim fund. Both the reclaim fund and the charity (or charities) must consent to the transfers.
31. The charity or charities must either be considered by the bank or building society to have a “special connection” with that institution or undertake to spend the money for the benefit of communities local to the institution’s branches. The first option enables money to be transferred to local charities, whilst the second option enables money to be transferred to non-local charities (for example national charities) which support local projects.
32. *Subsections (5) and (6)* explain that a charity has a “special connection” with a bank or building society if the charity’s main purpose (or one of its main purposes) is to benefit members of communities local to the bank or building society’s branches. In the case of building societies, a charity will also be regarded as having a “special connection” with the society if the charity’s main purpose (or one of its main purposes) reflects any particular purpose which the society has (apart from that of making residential loans as required under section 5(1)(a) of the Building Societies Act 1986). A building society’s purposes are set out in its memorandum. An example would be a particular purpose to promote sustainable development or education.

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<sup>1</sup> A directory of building societies can be found on the Building Societies Association’s website: [www.bsa.org.uk/keystats/buildingsocietysector.htm](http://www.bsa.org.uk/keystats/buildingsocietysector.htm).

*These notes refer to the Dormant Bank and Building Society Accounts Act 2008 (c.31) which received Royal Assent on 26th November 2008*

33. *Subsection (2)(b)* provides the customer with a legally enforceable right to repayment of their balance against the reclaim fund. The customer is entitled to the same right to repayment as they would have against their bank or building society had the transfer not taken place. As for section 1(2)(b), section 2(2)(b) should be read subject to the provisions of sections 8 (which deals with the entitlement to interest and the deduction of charges) and 11 (which explains the effects of events such as insolvency).
34. As explained in relation to section 1, the requirement that the reclaim fund must consent to the transfer of any balance enables the reclaim fund to ensure that suitable arrangements are in place to handle claims for repayment. As for the main scheme (section 1) it is expected that banks and building societies will agree to act as agents of the reclaim fund and continue to manage the customer relationship.
35. The requirement that the charity (or charities) must consent to the transfer enables a charity to refuse money where appropriate, for example, if it does not have the resources to distribute the payment.
36. Smaller banks and building societies will be required to report on how much money they transfer to charities and the identity of those charities in their annual reports. For building societies, it is intended that these requirements be imposed by amending the [Building Societies \(Accounts and Related Provisions\) Regulations 1998 \(SI 1998/504\)](#) which are made under section 75 of the Building Societies Act 1986. For banks, provision is made in section 13 of the Act for this information to be included in their annual reports.