

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1: Transfer of balances in dormant accounts

Section 1: Transfer of balances to reclaim fund

25. This section provides that a bank or building society's liability to pay the balance owed to a customer in relation to a dormant account is extinguished where that balance is transferred to an authorised reclaim fund which consents to the transfer. This section will allow a bank or building society's liability to a customer in relation to a transferred balance to be de-recognised under International Accounting Standards (IAS 39) and UK Generally Accepted Accounting Practice ("GAAP") (FRS 26). Sections 6 to 10 contain definitions of a number of terms relevant to this provision, including "authorised", "building society", "bank", "balance", "account" and "dormant".
26. *Subsection (2)(b)* gives the customer 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. It should be read subject to the provisions of section 8 which sets out the customer's entitlement to interest (and permits the deduction of charges), and section 11, which explains the effects of events such as insolvency of the bank or building society on the calculation of the customer's entitlement.
27. *Subsection (3)* makes it clear that the balances of deceased persons are within the scheme, and can be transferred to the reclaim fund under subsection (1) and reclaimed under subsection (2) by the people to whom the right to payment has passed.
28. 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. 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. The precise details of any agency arrangement will be a matter for negotiation between the bank or building society and the reclaim fund.

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 societies¹ 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.

¹ A directory of building societies can be found on the Building Societies Association's website: www.bsa.org.uk/keystats/buildingsocietysector.htm.

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.
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.

Section 3: The assets-limit condition

37. This section sets out the assets-limit condition with which a bank or building society must comply in order to participate in the alternative scheme under section 2.
38. *Subsection (1)* defines smaller institutions as those that had total assets of less than £7 billion on the last day of the most recent financial year for which accounts have been

prepared. The term “financial year” is defined in section 6. Once an institution’s annual accounts for a financial year show total assets in excess of £7 billion it is no longer eligible to participate in the alternative scheme.

39. *Subsection (2)* explains how the assets-limit condition is applied in relation to institutions which are members of a group (as defined by section 6).
40. *Subsection (3)* explains how the assets-limit condition is applied where the institution’s accounts are not reported in sterling (for example if it is a UK branch of a foreign bank).
41. *Subsections (4) and (5)* contain an order-making power to allow the Treasury to amend the assets limit.

Section 4: Effect of balance transfer on membership rights

42. Building society members enjoy various rights under the Building Societies Act 1986, subject to the internal rules of the building society. These include the right to receive distributions when a society merges or demutualises in accordance with section 96 or 100 of the Building Societies Act 1986.
43. *Subsections (1) to (4)* ensure that building society membership rights are preserved where the balance of a dormant account held by a member of the society is transferred under section 1 or 2, until the point at which the customer is repaid.
44. *Subsection (5)* ensures that where a reclaimed balance is paid back into a building society account within a reasonable time, membership rights continue to be preserved until the money has been credited to the account. After the money has been credited, application of the usual rules relating to membership will resume. This ensures that continuity of membership rights is preserved throughout. The period of membership immediately prior to the transfer of the balance to the reclaim fund, the period it remained unclaimed, the period between the claim and the deposit of the money in a building society account, and the subsequent period, will all count towards calculating the total length of membership for the purposes of any rights for which a qualifying period of membership applies.
45. *Subsection (6)* ensures that membership rights are preserved where a customer’s original building society merges with or transfers its business to another building society.

Section 5: Functions etc of a reclaim fund and Schedule 1: Provision to be made in articles of association of reclaim fund

46. A “reclaim fund” will receive money from dormant accounts transferred from individual banks and building societies under sections 1 and 2. Section 5 defines “reclaim fund”. It must be a company incorporated under the Companies Act 2006 with restricted purposes (company objects). The main purposes are:
 - the management of money transferred from dormant accounts;
 - the payment of claims by dormant account holders whose balances have been transferred into the scheme; and
 - the transfer of surplus money to the Big Lottery Fund (or any other distributor appointed under section 24).
47. The reclaim fund will be expected to keep sufficient reserves of money to meet anticipated levels of claims for repayment by customers, to comply with rules imposed by the Financial Services Authority and to cover its running costs.
48. *Schedule 1* sets out further provision that must be included in the articles of association of a reclaim fund. The requirements are designed to ensure that the deductions of expenses which are made from a reclaim fund’s income are reasonable, that no

distributions are made to its members and that information about levels of participation in the dormant accounts schemes is published.

49. *Subsection (4)* contains a direction-making power for the Treasury to ensure compliance by a reclaim fund with its articles of association.
50. *Subsection (5)* requires the Treasury to lay before Parliament any directions it gives under subsection (4).
51. The British Bankers' Association and Building Societies Association have committed to lead on the selection or establishment of a body to act as a reclaim fund.

Section 6: Interpretation of Part 1

52. This section defines a number of terms used in Part 1 of the Act, including "building society".

Section 7: "Bank"

53. This section explains which banks are eligible to participate in the schemes under sections 1 and 2. "Bank" is defined by reference to persons authorised for the purposes of the Financial Services and Markets Act 2000 ("FSMA") to accept deposits. (Deposit-taking is specified as a regulated activity under section 22 of FSMA, by article 5 of the [Regulated Activities Order 2001 \(SI 2001/544\)](#)). These are either banks incorporated in the UK (or foreign banks incorporated outside the EEA) which are authorised to accept deposits in the UK by the Financial Services Authority; or credit institutions authorised in another EEA Member State in accordance with the Banking Consolidation Directive (Directive [2006/48/EC](#)) which exercise passport rights under Schedule 3 to FSMA to accept deposits in the UK. Broadly speaking, the definition aims to capture all retail banks operating from branches in the UK.
54. *Subsections (3) and (4)* exclude from this definition:
 - those institutions that have permission under FSMA to accept deposits only in the course of another activity, for example insurance providers;
 - those specified, or within a class of persons specified, by an exemption order made under section 38 of FSMA. The [Financial Services and Markets Act 2000 \(Exemption\) Order 2001 \(SI 2001/1201\)](#) specifies various banks and classes of persons, with the effect that, for example, certain international development banks and charities are excluded from the definition of "bank"; and
 - UK building societies, credit unions and friendly societies.

Section 8: "Balance"

55. This section sets out the meaning of the term "balance". This definition is relevant to understanding the amount of money which must be transferred to a reclaim fund and the amount which a customer is entitled to reclaim, under sections 1 and 2. It ensures that a customer is entitled to payment of their original deposit plus interest due in accordance with the terms of the original contract (less any charges which would have been deducted).

Section 9: "Account"

56. This section explains which accounts are eligible to be included in the dormant accounts schemes under sections 1 and 2. Accounts which are operated by a bank or building society in connection with activities other than deposit-taking (for example those which relate to the provision of insurance or mortgages) are excluded from the definition.

Section 10: “Dormant”

57. This section explains when an account will be regarded as dormant for the purposes of sections 1 and 2. In practice, as participation in the scheme is voluntary, institutions will have the flexibility to take into account other indications as to whether an account is genuinely dormant, in addition to meeting the requirements of this section. For example, correspondence from the customer or activity in relation to other accounts held with the same institution may be regarded as evidence that the customer is still active and that their account which would otherwise meet the definition of “dormant” should not be transferred to the scheme.
58. *Subsection (2)(a)* excludes from the scheme “no mail” accounts (i.e. those accounts where the account holder has instructed their bank or building society not to contact them).
59. *Subsection (2)(b)* provides that in relation to “fixed-term” accounts, the 15 year dormancy period does not begin to run until the end of the fixed-term period.
60. *Subsection (3)* clarifies that if an account is closed by someone other than the account-holder, for example if it is closed by a bank or building society for administrative reasons, this is not to be taken into consideration when determining whether the account is dormant for the purposes of subsection (1).
61. *Subsection (4)* ensures that child trust fund accounts are treated as fixed term accounts under subsection (2)(b) and excluded from the dormant accounts scheme whilst the child is under 18. The [Child Trust Funds Regulations 2004 \(SI 2004/1450\)](#), made under section 3(4)(d) of the Child Trust Funds Act 2004, permit withdrawals before the age of 18 where the child is terminally ill or has died.
62. *Subsections (5) and (6)* contain a power to allow the Treasury to amend the period of time that an account has been open and inactive before it can be considered dormant. It is anticipated that such a power would only be used if the evidence of the early years of the operation of the scheme, and the experience of institutions, suggest that the 15 year period is inappropriate. It is also anticipated that there would be a reasonable period of time between the announcement of such a change and its implementation, to allow the amendment to be publicised before it took effect.

Section 11: Customer’s rights preserved on insolvency etc of bank or building society

63. This section ensures that a dormant account holder is entitled to repayment of the balance (plus interest due and less charges that would have been payable) in full, even if the liability that the customer’s bank or building society would have had if their balance had not been transferred is reduced or cancelled (for example if the bank is wound up and dissolved after the balance has been transferred). However, this does not apply in the case of accounts governed by Scots law where the bank or building society’s liability would have been cancelled as a result of the application of the Prescription and Limitation (Scotland) Act 1973. This Act provides for liability to be extinguished if no relevant claim has been made by an account holder, or no relevant acknowledgement of the debt has been made by a bank or building society, after certain specified periods.

Section 12: Disclosure of information

64. This section enables banks and building societies to transfer to the reclaim fund any confidential information they hold that is required to ensure that a dormant account holder who makes a claim under section 1 or 2 is repaid. In practice, institutions are not expected routinely to transfer customer records to the reclaim fund because they will handle claims for repayment as agents of the reclaim fund and continue to maintain their customers’ records. However, in exceptional circumstances the transfer of confidential

information may be necessary, for example where a dispute arises which involves the reclaim fund directly.

Section 13: Banks making transfers under section 2: information in directors' reports

65. This section requires banks which participate in the alternative scheme for smaller institutions and transfer money under section 2 to report on the amounts of money transferred to charities under that scheme and the identity of the charities. Similar reporting obligations will be imposed on building societies which participate in this scheme by way of amendments to the [Building Societies \(Accounts and Related Provisions\) Regulations 1998 \(SI 1998/504\)](#) which were made under section 75 of the Building Societies Act 1986.

Section 14: Review and report to Parliament

66. [Section 14](#) requires the Treasury to report, within three years of the date the first reclaim fund is authorised, on the operation of Part 1 of the Act and on the effectiveness of financial institutions' efforts to make sure that those entitled to money in inactive accounts are aware of the fact.

Section 15 and Schedule 2: Amendments to the Financial Services and Markets Act 2000

67. [Section 15](#) introduces Schedule 2, which makes amendments to the Financial Services and Markets Act 2000 ("FSMA").
68. [Paragraph 1](#) amends the list of activities in Schedule 2 to FSMA to include the activities of a reclaim fund. Schedule 2 to FSMA supplements section 22 of FSMA by describing, non-exhaustively, the sorts of activities which may be specified under section 22 as "regulated activities". The Treasury intend to specify the activities of paying customer claims under sections 1 and 2 and of the management of dormant account funds in accordance with section 5(1)(b) as "regulated activities" under section 22 of FSMA, by way of an amendment to the [Regulated Activities Order 2001 \(SI 2001/544\)](#), and will consult on this. This is to enable a reclaim fund to be authorised by the FSA.
69. [Paragraphs 2 to 5](#) amend Part 7 of FSMA, which provides for the control of transfers of business. The amendments will enable a reclaim fund to transfer its liabilities (as well as its assets) to another FSA authorised reclaim fund with the approval of the court. Without this provision, liabilities could usually only be transferred with the consent of all the original account holders or by way of an Act of Parliament. Similar provisions already exist in relation to banking and insurance business transfers.
70. [Paragraphs 6 and 7](#) amend Part 24 of FSMA, which enables the FSA to intervene in the event of the insolvency of an FSA authorised person.
71. [Paragraph 6](#) provides that where an authorised reclaim fund defaults on its obligation to repay a customer, following a claim made under sections 1 or 2, this will be treated as an indication that it is unable to pay its debts for the purposes of paragraph 11 of Schedule B1 to the Insolvency Act 1986. This is the ground on which a court may make an administration order.
72. [Paragraph 7](#) inserts a new section into Part 24 of FSMA, which requires that a person other than the FSA who presents a petition to wind up or appoint a provisional liquidator in respect of an authorised reclaim fund must serve a copy of the petition on the FSA. This will ensure that the FSA is made aware of the situation and is given the maximum possible time to intervene to protect dormant account holders' interests.

Part 2: Distribution of money under the general scheme

Section 16: Distribution of dormant account money by Big Lottery Fund

73. This section gives the Big Lottery Fund (“the Fund”) power to distribute for social or environmental purposes dormant account money passed to it by a reclaim fund. The Fund is a body corporate established by section 36A of the National Lottery etc Act 1993. The Fund is the largest of the distributors of lottery resources.
74. *Subsection (3)* allows the Fund to distribute assets to recipient bodies in the form of grants or loans, or through other arrangements.
75. *Subsection (5)* enables the Fund to distribute dormant account money to create endowments, including permanent endowments.

Section 17: Apportionment of dormant account money

76. This section allows the Secretary of State to set out by order the apportionment, in percentage terms, of dormant account money passed to the Fund by a reclaim fund to cover expenditure in England, Wales, Scotland and Northern Ireland. This is expected to be done on a per capita basis. It also sets out the formula for calculating the amount of dormant account money which will be available for apportionment in each financial year. This requires the deduction from the overall dormant account money received by the Fund from the reclaim fund of (a) the Fund’s expenses and (b) the Secretary of State’s expenses in overseeing the Fund. The amount after these deductions is the amount available for apportionment.

Sections 18- 21: Distribution of money for meeting English, Welsh, Scottish and Northern Ireland expenditure

77. *Section 16* sets out the overall purposes for which dormant account money may be distributed (i.e. social and environmental purposes). *Section 18* sets out two particular purposes, and one particular kind of recipient, for which the proportion of dormant account assets allocated for expenditure in England will be used.
78. The particular purposes, and kinds of recipient, for dormant account expenditure apportioned to the devolved administrations of Wales, Scotland and Northern Ireland have not yet been determined and will not be set out on the face of the Act. Instead, sections 19, 20 and 21 give Welsh Ministers, Scottish Ministers and the Northern Ireland Department of Finance and Personnel respectively the power to restrict the particular purposes for which, and the kind of person to whom, dormant account money apportioned to their country will be distributed.
79. It is envisaged that the particular purposes and recipients set out in section 18 for England and set out in orders for the other three countries will be specified further in directions given to the Fund by the Secretary of State or by the devolved administrations under section 22.

Section 22: Directions to Big Lottery Fund

80. This section requires the Fund to comply with any directions given to it by the Secretary of State and by the devolved administrations in relation to their devolved expenditure. The powers set out in this section are broadly similar to the powers to give directions under the National Lottery etc Act 1993, save that *subsection (3)(c)* and *(d)* adds that directions may relate to the process used to decide what payments to make and to the terms and conditions upon which the Fund makes loans or grants or enters into other arrangements. The Fund must be consulted before any direction is given under this section.
81. Only the Secretary of State has power to issue directions under *subsection (4)* relating to operational matters such as financial management, staffing and accounts.

Section 23: Power to prohibit distribution in certain cases

82. This section enables the Secretary of State, by order, to prohibit the Big Lottery Fund from distributing dormant account money to any person in certain circumstances. This power is designed to allow the Secretary of State to intervene in cases where there may be a perceived conflict of interest in the relationship between the Big Lottery Fund and a particular body.
83. *Subsection (2)* requires the Secretary of State to consult the devolved administrations before issuing an order that the Secretary of State considers could impact on expenditure or affect persons within Scotland, Wales and Northern Ireland.
84. *Subsection (4)* gives the Secretary of State the power to require the Fund to provide any information which the Secretary of State needs to assist in the exercise of the power of prohibition.

Section 24: Power to add or remove distributors

85. This section allows the Secretary of State to add or remove distribution bodies. This power may be exercised as a sanction for failure to comply with a direction given under section 22 or contravention of a prohibition order made under section 23. Alternatively, it may be exercised to add a distributor with particular expertise or to remove a distributor whose particular expertise is no longer required. This power is exercisable after consultation with the devolved administrations.

Section 25: Power of Big Lottery Fund to enter into arrangements

86. The Fund has only a limited power, under the National Lottery etc Act 1993, to hold and invest money in an interest-bearing account. Money is managed by the National Lottery Distribution Fund. This section gives the Fund the power to make arrangements for another body to hold or invest dormant account money allocated to it, on its behalf. Subsection (4)(a) of section 22 gives the Secretary of State the power to give directions restricting the nature of the arrangements into which the Fund can enter.
87. *Subsection (2)* enables a reclaim fund, following arrangements with the Fund, to make payments on the Fund's behalf directly to the Consolidated Fund to defray expenses incurred by the Secretary of State in carrying out functions under this Act. Similarly, it allows a reclaim fund and the Fund to arrange for the reclaim fund to make payments on the Fund's behalf to the devolved administrations, to defray expenses incurred by those administrations.

Section 26: Expenses

88. This section allows the Fund to defray any expenses incurred in carrying out its obligations set out in the Act. Such expenses will be deducted from dormant account money before it is apportioned for distribution.
89. This section also allows the Secretary of State to reclaim expenses incurred in carrying out the functions set out in this Act. The combined effect of section 17(3) and *subsection (3)* of this section is that these expenses are to be defrayed from dormant account money before apportionment for distribution, with the exception of expenses incurred in relation to the giving of directions for English expenditure. Subsection (3)(a) gives the Secretary of State the power to deduct these expenses from the sums apportioned for English spending. *Subsections (6) to (10)* give the devolved administrations the power to defray expenses incurred under the Act from the sums apportioned for distribution in their country.

Section 27: Interpretation of Part 2

90. This section defines a number of terms used in Part 2 of the Act.

Schedule 3: Further provision about the functions of the Big Lottery Fund

91. *Schedule 3* sets out further functions of the Fund as the distributor of dormant account money. They include a requirement where so instructed to issue strategic plans relating to distribution of dormant account money in England, Scotland, Wales and Northern Ireland (Part 1) and a provision allowing it to delegate its dormant account functions to another body or person (Part 2). Part 2 also allows the devolved expenditure committees set up under the National Lottery etc Act 1993 to play a role in devolved expenditure under this Act.
92. *Part 3* applies similar reporting obligations in respect of the distribution of dormant account money as those set out in the National Lottery etc Act 1993. These require the Fund to keep proper accounting records in respect of the distribution of dormant account money, separate from those of the distribution of lottery resources, and to prepare a statement of accounts relating to the distribution of such assets at the end of each financial year. The Fund will also be required to report to the Scottish Parliament and the Welsh and Northern Ireland Assemblies.
93. *Part 4* includes the provision of a number of further powers in respect of the Big Lottery Fund's role as the distributor of dormant account assets. These powers are similar to powers which the Fund has as a distributor under the National Lottery etc Act 1993.
94. *Paragraph 12* enables the Fund to identify and approach any body, with a particular expertise, to invite it to make an application for dormant account money.
95. *Paragraph 13* allows the Fund, when making a decision about distributing dormant account assets, both to consult any person and to take account of the opinions expressed to the Fund or information submitted to it as a result of that consultation. The paragraph is intended to remove any doubt about whether the Fund has the power to consult or take into account such opinions and information in exercising its powers to distribute dormant account assets.
96. *Paragraph 14* is intended to remove any doubt about the powers of the Big Lottery Fund to publicise the distribution of dormant account money. As well as allowing the Fund to publicise its own award of a grant and its purposes, this section enables it to participate in publishing more general information about its work in relation to the distribution of dormant account money. The intention is that by doing so the Fund will be able to inform the public better about what the money it is distributing is achieving overall, and to raise awareness of, and support for, the results of the distribution of dormant account assets across the UK.
97. *Paragraph 15* is intended to clarify that the Fund may give advice about the distribution of dormant account money and the use of dormant account money that has been distributed. For example, the Fund might provide advice to bodies applying to be a recipient of dormant account money.