

A UK unclaimed assets scheme: a final impact assessment

November 2007



HM TREASURY



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a final impact assessment**

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Summary: Intervention & Options

Department /Agency: HM Treasury	Title: A UK unclaimed assets scheme: a final impact assessment	
Stage: Final proposal	Version: Final	Date: October 2007
Related Publications: Partial Regulatory Impact Assessment (March 2007)		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

Problem: to facilitate a cost effective unclaimed assets scheme covering dormant bank and building society accounts where consumers have a legal right to reclaim their money, where money not needed to cover ongoing reclaim from account holders is released for reinvestment in the community.

Government intervention: this is necessary to extinguish the liability of a bank or building society to repay account holders in respect of accounts transferred to the scheme, to provide a legal right for account holders to reclaim their money, and to provide a cost effective distribution mechanism.

What are the policy objectives and the intended effects?

Objectives: to enable a light touch scheme building on existing infrastructures, minimising scheme running costs for participating institutions, and the scheme as a whole, and thereby maximise money available for reinvestment in the community, whilst ensuring account holders' legal right to reclaim their money.

Intended effects: communities affected by the scheme's distribution priorities will benefit from funding otherwise unavailable, affected account holders will be able to claim their money back and the scheme is transparent about which institutions participate and how.

What policy options have been considered? Please justify any preferred option.

1. Let the current situation continue.
2. A voluntary scheme: this is preferred as it meets the policy objectives and is cost effective.
3. A compulsory scheme.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? HM Treasury will consider an appropriate date for review once the scheme is established.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:



Date: 29 October 2007

Summary: Analysis & Evidence

Policy Option: 2	Description: To facilitate the establishment of an unclaimed assets scheme to benefit the wider community through voluntary participation .
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' None. See Evidence Base for monetised costs not directly generated by legislation.
	One-off (Transition) Yrs	
	£ Nil	
	Average Annual Cost (excluding one-off)	
£ Nil	Total Cost (PV)	£ Nil
Other key non-monetised costs by 'main affected groups' None. See Evidence Base for non-monetised costs not directly generated by legislation.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' None. See Evidence Base for monetised benefits not directly generated by legislation.
	One-off Yrs	
	£ Nil	
	Average Annual Benefit (excluding one-off)	
£ Nil	Total Benefit (PV)	£ Nil
Other key non-monetised benefits by 'main affected groups' None. See Evidence Base for non-monetised benefits not directly generated by legislation.		

Key Assumptions/Sensitivities/Risks As legislation is enabling it does not itself generate costs or benefits. However, a successful scheme will require the establishment of a reclaim fund, the participation of banks and building societies, the reclaim fund meeting reclaim applications and surplus money being available for reinvestment in the community.

Price Base Year 0	Time Period Years 0	Net Benefit Range (NPV) £ Nil	NET BENEFIT (NPV Best estimate) £ Nil
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	Potentially 2009				
Which organisation(s) will enforce the policy?	N/A				
What is the total annual cost of enforcement for these organisations?	£ N/A				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	N/A				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	Yes/No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro Nil</td> <td style="width: 25%; text-align: center;">Small Nil</td> <td style="width: 25%; text-align: center;">Medium Nil</td> <td style="width: 25%; text-align: center;">Large Nil</td> </tr> </table>	Micro Nil	Small Nil	Medium Nil	Large Nil
Micro Nil	Small Nil	Medium Nil	Large Nil		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ N/A	Decrease of £ N/A	Net Impact £ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

EVIDENCE BASE (FOR SUMMARY SHEET)

COSTS AND BENEFITS INCLUDED IN THE IMPACT ASSESSMENT

1.1 This impact assessment focuses on the additional costs and benefits a voluntary scheme, the preferred policy option, will generate.

1.2 Under a voluntary scheme legislation will allow, but not compel, banks and building societies to transfer money in dormant accounts to an unclaimed assets scheme where money not needed to cover ongoing reclaim from account holders is released for reinvestment in the community. Aspects of the proposed scheme fall outside legislation, for example how bank and building societies will treat account holders potentially affected by the scheme. This will be regulated by the Banking Code, a revised edition of which is due to come into effect in March 2008, reflecting the unclaimed assets scheme.¹

1.3 As legislation does not compel banks and building societies to transfer assets to the community, the proposed Bill does not directly generate costs and benefits for the main affected groups. For this reason no figures have been entered on page two, 'Summary: Analysis and Evidence'. However, legislation will facilitate a voluntary unclaimed assets scheme and it is expected that such a scheme would give rise to additional costs and benefits for these groups:

- consumers;
- banks and building societies taking part in the scheme;
- organisations involved in the transfer of assets; and
- third sector organisations and the communities that they serve.

INTERVENTIONS AND OPTIONS

Problem

1.4 To facilitate a cost effective unclaimed assets scheme covering dormant bank and building society accounts where consumers have a legal right to reclaim their money, where money not needed to cover ongoing reclaim from account holders is released for reinvestment in the community.

Need for Government intervention

1.5 It is not possible to release money held in dormant accounts for reinvestment in the community, and protect the rights and interests of account holders and financial institutions without legislation. Government intervention is necessary to extinguish the liability of a bank or building society to repay account holders in respect of accounts

¹ The Banking Code is sponsored by the British Bankers' Association, the Building Societies Association and APACS - the UK payments association. It is a voluntary code which sets standards of good banking practice for banks and building societies to follow when they are dealing with personal customers in the UK.

transferred to the scheme, and to place an obligation on the proposed scheme's reclaim fund to repay affected account holders.

1.6 Banks and building societies that use International Accounting Standards and those that are following FRS 26 under UK GAAP are required to recognise in full their liability to repay each individual dormant account holder. The liability may be removed from the balance sheet ('de-recognised') when and only when it is extinguished.² To extinguish the liability the bank or building society must:

- pay the dormant account holder;
- obtain release from the liability under some term of the contract with the account holder;
- obtain legal release from the account holder; or
- be released from the obligation by process of law.³

1.7 However, the nature of dormant accounts is such that it is not possible for the bank or building society to pay amounts back to account holders or to obtain legal release from them, because generally they cannot be contacted. It would also be unusual for the current contractual terms underlying a typical bank account to make provision for unilateral legal release by the bank in the event of the account becoming dormant. Banks are not permitted simply to extinguish their liability and remove it from their balance sheets.⁴

1.8 The intention therefore is that legislation will allow banks and building societies to extinguish their liability to a dormant account holder so that the liability can be de-recognised for accounting purposes if certain conditions are met.⁵

1.9 Without de-recognition of the liability to the dormant account holder, the accounting treatment of the transfer would provide a major disincentive for banks and building societies to transfer money to the proposed scheme.

1.10 The proposed conditions to extinguish the liability are:

1. The account is held by an institution which meets the definition of "bank" or "building society" under the legislation (broadly speaking, all retail banks or building societies operating in the UK), and relates to its deposit-taking activity only (for example, not in relation to mortgage or insurance business);
2. The account meets the definition of the types of account eligible for transfer (including that it has at all times consisted only of money and not other assets);
3. The account meets the definition of "dormancy" (in particular that there have been no customer initiated transactions for at least 15 years); and

² IAS 39 paragraph 39.

³ This is set out in detail in IAS 39 guidance paragraphs AG57 to AG63.

⁴ The impact of the Prescription and Limitation (Scotland) Act 1973 provides a possible exception to this in respect of accounts governed by Scots law, which will be taken into account in developing the details of the scheme.

⁵ The proposed scheme will not affect account holders' building society membership rights.

4. The money is transferred to a reclaim fund authorised by the Financial Services Authority, which consents to the transfer.

1.11 The Bill will provide the legal right for account holders whose assets are transferred to reclaim their money from a reclaim fund. In addition, the proposed legislation will amend the Financial Services and Markets Act 2000 so that it will be possible for HM Treasury to specify any of the activities of a reclaim fund as regulated activities for the purposes of that Act, enabling them to be regulated by the Financial Services Authority (FSA).⁶ Assets not required by a reclaim fund to cover ongoing reclaim or to meet its reasonable running costs will be transferred to the Big Lottery Fund (BIG) for onward distribution. Legislation names BIG as responsible for the distribution of surplus assets in the UK, except those distributed through smaller, locally-based, financial institutions meeting certain conditions.

Policy objectives

1.12 The policy objectives are to enable a light touch scheme building on existing infrastructures, minimising scheme running costs for participating institutions and the scheme as a whole and thereby maximise money available for reinvestment in the community, whilst ensuring that account holders retain a legal right to reclaim their money.

1.13 The principles underlying the operation of the proposed scheme are:

- wherever possible, to re-unite account holders with the assets that are rightfully theirs;
- to provide a legal right for account holders to reclaim their money;
- to take a light touch approach which minimises running costs for the scheme and participating institutions, by wherever possible building on the existing infrastructure, in order to maximise the money available for reinvestment in the community; and
- to take account of better regulation principles. The proposed UK scheme will therefore differ significantly from other international arrangements being in part a self-regulatory scheme. It is proposed that legislation will enable, but not compel, banks and building societies to transfer funds held in dormant accounts. Banks and building societies have committed to work with the Government to design, and participate in, the UK scheme.

1.14 The principles underlying the mechanism to distribute the assets are:

- distribution to be managed on a devolved basis, with distribution in England to focus on youth services that are responsive to the needs of young people, followed by financial capability and inclusion. Resources permitting, the Government would also like to see a proportion of assets used to boost social investment and develop the long-term sustainability of the third sector. The devolved administrations of Scotland, Wales and

⁶ The FSA is given statutory powers by the Financial Services and Markets Act 2000 to achieve the objectives of maintaining market confidence, promoting public awareness of the financial system, securing the appropriate degree of protection and reducing financial crime.

Northern Ireland will determine their own priorities for distribution, which may differ from those of England;

- a fair distribution of assets across all four countries of the United Kingdom;
- spending to be additional to Government provision, in a manner that takes account of the role of the third sector in the delivery of spending priorities;
- a distribution process that is fully accountable and transparent;
- the available resources, in England, used to deliver practical projects in local communities;
- distribution to be managed efficiently, with as little resource as possible being spent on administration and running costs; and
- distribution in England to focus on a diverse range of communities across the country.

Intended effects

1.15 The practical outcomes of the proposed scheme are intended to be:

- communities affected by the scheme's distribution priorities will benefit from funding otherwise unavailable;
- affected account holders will be able to claim their money back; and
- transparency on which banks and building societies participate and how.

What policy options have been considered?

1.16 The implementation options for an unclaimed assets scheme are:

- option 1 – let the current situation continue;
- option 2 – a voluntary scheme; and
- option 3 – a compulsory scheme.

Option 1 – let the current situation continue

1.17 Without legislation the current situation will continue as banks and building societies would not participate in an unclaimed assets scheme. Without legislation these financial institutions would not be able to extinguish their liability to dormant account holders upon transfer of money for reinvestment in the community.

Option 2 – a voluntary scheme

1.18 The proposed legislation will facilitate the establishment of an unclaimed assets scheme to benefit the wider community, by enabling banks and building societies to extinguish their liability to dormant account holders, upon transfer of money for reinvestment in the community. However, it will be for individual banks and building societies to decide whether or not to participate in the scheme. Where possible the

scheme will draw on existing systems and infrastructures to maximise the amount of assets for distribution.

1.19 The bank and building society sector support the scheme and have confirmed that aspects of the scheme, those that regulate how financial institutions treat their customers will be self-regulated through the Banking Code.

1.20 Before the introduction of the scheme, banks and building societies will run a comprehensive reunification campaign to reunite customers with their dormant accounts. The British Bankers' Association (BBA), Building Societies Association (BSA) and National Savings and Investments (NS&I) already have free tracing systems in place to assist account holders looking for their dormant accounts. The reunification exercise will build on these processes, as well as financial institutions' internal systems, to reunite customers with their funds. In addition, consumers will also benefit from the scheme's other protections:

- the account holder's ongoing legal right to repayment by a reclaim fund after the scheme is launched;
- updated provisions in the Banking Code setting out how customers should be treated;
- right of access to the Financial Ombudsman Service for the resolution of disputes; and
- liability for reclaim transferred to a reclaim fund which must have been granted authorisation by the FSA.

1.21 Once the scheme is operational, banks and building societies will be able to transfer money held in dormant accounts to a reclaim fund. A dormant account will be defined as an account on which there has been no customer-initiated transactions for a period of 15 years. In addition to meeting the minimum requirement of no customer-initiated transactions, financial institutions will also have the flexibility to refer to other customer activities such as correspondence, phone calls, emails and voting at AGMs, in deciding whether an account should be transferred.

1.22 Where money is transferred to a reclaim fund, the reclaim fund will have the legal obligation to repay the account holder. Participating institutions' existing liabilities on these transferred assets will be extinguished. The establishment of a central reclaim fund will enable the reclaim risk to be pooled and managed more efficiently. Customers will be entitled to reclaim money that has been transferred on application to their original bank or building society, which will act as agent of a reclaim fund. Banks and building societies will be responsible for calculating the amounts of interest to be repaid, including any interest due. As a reclaim fund will not ordinarily manage customer enquiries, this will reduce its running costs and will avoid the need for personal account data to be transferred to it. The BBA and the BSA are taking to lead in identifying or setting up a reclaim fund.

1.23 Money that a reclaim fund does not need to meet reclaim, or cover its own reasonable costs, will be passed on to BIG for onward distribution according to the scheme's spending priorities.

1.24 The legislation will provide for a reclaim fund to be managed prudently so that sufficient money is available to fund anticipated applications for reclaim. The Bill also requires a qualifying reclaim fund to be authorised by the FSA. The proposed legislation provides for a reclaim fund to publish data on which financial institutions are participating in the scheme, the value of assets a financial institution has transferred to a reclaim fund, the value of assets the institution has reunited with account holders and the amount transferred to BIG.

1.25 Banks and building societies taking up the option for smaller, locally based, institutions will be required to transfer an agreed amount to meet reclaim applications to a reclaim fund but will then be free to distribute the balance to charities for the benefit of their local communities. These financial institutions will be required to disclose which charities they transfer money to and how much in their annual reports.

1.26 It is expected that retail banks and building societies will participate in the scheme. For example, if the banks and building societies that subscribe to the Banking Code participated, it is possible that over 115 financial institutions could take part in the scheme.

1.27 The Government relies on the bank and building society sector for estimates of the current stock of unclaimed assets. The BBA suggests that unclaimed assets within bank accounts currently amount to £250 - £350 million. The BSA has separately advised that unclaimed assets held within building society accounts could be up to £150 million. It is likely these figures will be reduced after the pre-scheme publicity campaign.

Option 3 – a compulsory scheme

1.28 Compulsory unclaimed assets schemes exist in other countries, for example in Australia, Canada, Ireland, New Zealand, Spain and the United States. Banks and building societies, and sometimes other organisations, are compelled by law to take part in these schemes. As with the proposed UK scheme, account holders can claim their assets back but typically these schemes are government run with money held in dormant accounts going to the state. There is considerable variation between these schemes and they impact on consumers and businesses differently. Features of some international schemes are:

- compulsory participation for certain institutions;
- no allowance made for institutions that may need to change their systems capability to comply with the scheme;
- relevant institutions are required to meet statutory requirements on reporting, record keeping and contacting asset owners;
- a searchable central register of unclaimed assets; and
- criminal sanctions for relevant institutions that do not comply with statutory requirements.

JUSTIFICATION OF PREFERRED OPTION

Option one – let the current situation continue

1.29 Banks and building societies would not be able to extinguish their liability to dormant account holders upon transfer of money for reinvestment in the community. It is unlikely, therefore that any money would be transferred. It is also possible that some consumers would be less aware of their dormant accounts than they would be if an unclaimed assets scheme were introduced. This does not meet the policy objectives.

Option two – a voluntary scheme

1.30 This option meets the policy objectives and is the most cost effective. It also facilitates the intended effects. These will be achieved through the proposed legislative provisions in addition to building on existing infrastructures and self-regulatory arrangements. The aim of this is to assist the cost effectiveness of the scheme, to minimise its running costs in order to maximise money for distribution and to meet reclaim applications.

1.31 There are clear advantages in a voluntary approach. A voluntary approach enables the use of the private sector expertise to manage and invest the money paid into a reclaim fund by banks and building societies. It also means that the liabilities to account holders can remain in the private sector. A voluntary scheme brings added flexibility. It will allow individual institutions to determine whether an account is genuinely dormant. As a result the UK scheme will be less rigid than most other international schemes, helping to reduce unnecessary administrative burdens.

1.32 The Bill's provisions meet the policy objectives by encouraging financial institutions to participate in the scheme by allowing them to extinguish their liability when a dormant account is transferred, making money available for reinvestment in the community. The provisions also provide consumers with a legal right to claim their money back. Banks and building societies will have flexibility as to the extent to which they participate in scheme as the legislation allows them to utilise existing systems capabilities.

1.33 In addition, the scheme will be able to draw on existing regulatory infrastructures, such as the self-regulatory Banking Codes to cover account holders affected by the scheme. Other aspects of financial institutions' participation will be covered by agency agreements it is envisaged they will have with a reclaim fund. An agency agreement could commit an institution to:

- retaining customer records to enable searches by the bank or building society;
- undertaking external audits of transfers to and from a reclaim fund;
- dealing with complaints;
- calculating the amount due to successful claimants, including accrued interest;
- meeting statutory reporting requirements; and
- providing management information/reclaim data to a reclaim fund.

1.34 The proposed legislation sets out the purposes a reclaim fund must have and other conditions it must meet, including those relating to disclosure. In addition, it is proposed that a reclaim fund must apply for FSA authorisation, which will only be granted if the relevant regulatory requirements are met, before carrying on any reclaim activities. A reclaim fund will therefore be subject to ongoing FSA regulation. The FSA will consult separately on the specific details of its regime.

1.35 The Bill also provides for assets not required for reclaim to be passed to BIG, which is already established to distribute money raised through the National Lottery. BIG will channel money in line with the scheme's objectives in order to benefit communities, which meet the scheme's spending priorities. Utilising an existing distribution mechanism will assist the scheme to minimise its costs and maximise assets for distribution.

Option three – a compulsory scheme

1.36 This would meet some of the scheme's policy objectives and facilitate the intended effects. Money otherwise unavailable would be released for reinvestment in the community. Consumers would have the legal right to claim their money back. It would be more costly for the bank and building society sector. It would most likely lead to financial institutions needing to change their systems to comply with statutory obligations and give them little flexibility in deciding whether an account is genuinely dormant. A compulsory scheme would also represent an additional regulatory burden as banks and building societies would need to comply with a new statutory enforcement regime.

1.37 In addition, a compulsory scheme could take longer to set up than the scheme proposed. Institutions would need time to adapt their systems to meet statutory obligations and time would be needed to set up a new monitoring and enforcement framework. This could affect when money would be available for distribution.

1.38 The costs involved in meeting new statutory obligations would affect the cost effectiveness of the scheme. This option, therefore, is not proposed.

REVIEW TO ESTABLISH ACTUAL COSTS AND BENEFITS

1.39 HM Treasury will consider an appropriate date for a review once the scheme is established. The early years of the scheme are unlikely to be indicative. The stock of unclaimed assets transferred from banks and building societies in the scheme's initial years is likely to be more than the ongoing flow in subsequent years.

ANALYSIS AND EVIDENCE

1.40 This section discusses the preferred option's costs and benefits. As legislation does not compel banks and building societies to transfer assets to the community, the proposed Bill does not directly generate costs and benefits for the main affected groups. However, legislation will facilitate a voluntary unclaimed assets scheme and it is expected that such a scheme would give rise to additional costs and benefits for these groups:

- consumers;
- banks and building societies taking part in the scheme;
- organisations involved in the transfer of assets; and
- third sector organisations and the communities that they serve.

Costs

Key monetised costs **1.41** Costs for banks and building societies, a reclaim fund, the Financial Services Authority, the public sector and third sector organisations have been identified.

Banks and building societies

1.42 Financial institutions will incur some costs to participate in the scheme. It is expected that these costs will be small and incremental. This is because banks and building societies will have flexibility in deciding how to participate in the scheme. They will be able to take into account their systems capabilities, and whether an activity arises from routine customer communication. Costs that banks and building societies could incur include:

- pre-scheme publicity and pro-active reuniting activity;
- notifying account holders of the scheme;
- publishing their policies on participation in the scheme;
- identifying unclaimed assets;
- transferring unclaimed assets to the scheme;
- record keeping and managing reclaim applications; and
- audit and certification of transactions with a reclaim fund.

1.43 The non-legislative framework supporting the scheme will influence the cost of these activities. This framework will consist of:

- provisions in the self-regulated Banking Code;
- agency agreements it is envisaged will exist between participating financial institutions and a reclaim fund; and
- the bank and building society sector's pre-scheme reuniting publicity campaign.

1.44 Other monetised costs will be incurred by banks and building societies choosing the smaller institutions option. Costs are likely to be generated by:

- disclosure: these banks and building societies will be required to disclose which charities they have distributed unclaimed assets to, and how much. One off and ongoing costs for disclosure are likely to be insignificant;
- agreeing an amount to transfer to a reclaim fund: the cost of this process could vary depending on an institution's processes for identifying dormant accounts; and

- identifying charities benefiting an institution's local community: the cost of this activity may be influenced by whether an institution already gives money to charities benefiting its local community.

Reclaim fund

1.45 The Bill does not establish a reclaim fund. However, once a reclaim fund has been identified or set up the Bill will impose monetised costs. These will be in relation to:

- FSA authorisation: the FSA will consult on its framework of costs in relation to a reclaim fund after the proposed legislation gains Royal Assent. The costs affecting a reclaim fund are a matter for the FSA, but it is possible that a reclaim fund could attract one-off authorisation costs in the region of £25,000, in addition to periodic fees and levies for the Financial Ombudsman Service and Financial Services Compensation Scheme. The FSA will consult on the basis for calculating these amounts in due course.
- disclosure: a reclaim fund would have to publish information about the level of participation by institutions in the scheme and the amount of money being transferred to BIG. Its processes for obtaining information and systems capabilities could affect the cost of meeting this obligation.

1.46 The proposed legislation provides that a reclaim fund may defray reasonable running costs from the unclaimed assets transferred to it.

Financial Services Authority

1.47 The FSA will also incur costs to develop and administer the new regulated activity, which will need to be recovered through a short-term increase in periodic fees.

Public sector

1.48 The Bill will allow the Secretary of State, the Devolved Administrations and BIG to defray costs from the unclaimed assets transferred to them.

Third sector organisations

1.49 The scheme does not impose any additional costs on third sector organisations. Third sector organisations will incur costs should they wish to apply for funding from the scheme. However, such costs are incurred when applications are made to other funding bodies and are part of seeking additional funding. In considering whether to make an application, these organisations will have to decide whether their purposes and activities are supported by the scheme's spending priorities, or if considering making an application to a financial institution taking up the option for smaller institutions, whether their work would benefit the institution's local community.

Key non-monetised costs

1.50 No non-monetised costs have been identified.

Benefits

Key monetised benefits

1.51 There are benefits for consumers and third sector organisations.

Consumers

1.52 The bank and building society sector will launch a pre-scheme publicity campaign with the intention of making consumers more aware of their dormant accounts. Once the scheme is operational the sector intends to notify customers generally of the introduction of the scheme and its implications for them. For active account holders notification will be included as part of existing correspondence. This reunification activity may put some account holders in touch with money held in accounts that previously they were unaware of.

Third sector organisations

1.53 The proposed scheme has the potential to release significant resources to the third sector. For example, in England third sector organisations will be able to apply for finance to support youth services that are responsive to the needs of young people and financial capability and financial inclusion. Resources permitting, the Government would also like to see a proportion of the available assets used to invest in the long-term sustainability of the third sector and boost the social investment market.

Key non-monetised benefits

1.54 There are benefits for consumers and banks and building societies.

Consumers

1.55 In addition to reclaiming money that might be otherwise forgotten, the publicity associated with the scheme may allow some consumers to be more aware of their accounts, leading them to manage their finances more efficiently.

Banks and building societies

1.56 Financial institutions that take part in the scheme may benefit from an enhanced reputation given the scheme's focus on reuniting account holders with their money, and where this is not possible, releasing money for reinvestment in the community. Participation will be transparent because of the scheme's disclosure requirements.

1.57 Reuniting activities may lead to banks and building societies gaining additional knowledge about their customer base, which they would not otherwise have. This may assist financial institutions' product development and customer communication.

KEY ASSUMPTIONS AND RISKS FOR A VOLUNTARY SCHEME

Assumptions

1.58 These assumptions have been made:

- banks and building societies take part in the scheme;
- the BBA and BSA will identify or set up a reclaim fund;
- a reclaim fund is able to fund reclaim applications; and
- after funding reclaim applications there is money available for reinvestment in the community.

Risks 1.59 These risks have been identified:

- no money is released to the community: financial institutions do not take part in the scheme, or after funding reclaim applications, there is no money available for reinvestment in the community; and
- consumers experience difficulties in reclaiming their money.

Testing assumptions

Eligible banks and building societies take part in the scheme 1.60 The impact assessment has identified some costs for financial institutions to take part in the scheme. In theory, this could dissuade some banks and building societies from participating. However, the costs should be small and incremental given that financial institutions will have flexibility on how they participate. The amount of assets banks and building societies hold in dormant accounts meeting the 15 year definition is very low compared to the assets held by these financial institutions in total. Therefore, the money that could be transferred to the scheme is not necessarily material to a financial institution's operations. In addition, the proposed legislation will provide financial institutions with a legal release from the liability to repay dormant account holders. This will be a benefit to institutions that have been unable to re-establish a customer relationship with such account holders. Therefore, it should not be a problem for eligible financial institutions to transfer unclaimed assets for reinvestment in the community.

The BBA and BSA will identify or set up a reclaim fund 1.61 The BBA's and BSA's commitment to identify or set up a reclaim fund was set out in one of the proposed scheme's consultation documents 'A UK Unclaimed Assets Scheme: a consultation'.⁷ The Government welcomes the BBA's and BSA's efforts to ensure the timely establishment of a reclaim fund and is encouraged by their undertaking to set one up should one not be identified.

A reclaim fund is able to fund reclaim applications 1.62 One of the scheme's principles is that account holders will have a legal right to reclaim their money. A reclaim fund's principal responsibility will be to manage reclaim risk so that money is available to meet future reclaim applications. A fund will need FSA authorisation, which will only be granted if it meets the relevant regulatory requirements. A reclaim fund's prudential requirements will be a matter for the FSA, which will consult separately on the rules associated with the activity of being a reclaim fund. Should consumers experience a problem with reclaiming their money they will have recourse to the Financial Ombudsman Service. In the event of insolvency, the FSA will have powers to intervene in the process and compensation will be provided by the Financial Services Compensation Scheme to cover payment claims up to the same limits which apply to bank and building society deposits.

There will be money available for reinvestment in the community 1.63 The aim of the scheme is to release money not needed to fund reclaim applications for investment in the community. The scheme's proposed distribution mechanisms will enable this. The amount of money available for reclaim will be affected by the success of the reunification campaign the bank and building society sector will launch prior to the scheme becoming operational. Once the scheme is operational the expected level of ongoing reclaim will also influence funds for reinvestment. Given the uncertainty around the potential level of reunification prior to the scheme and afterwards it is difficult to predict how much money will be available

⁷ This consultation document can be found at:

http://www.hm-treasury.gov.uk/consultations_and_legislation/unclaimed_assets/consult_unclaimedasset_index.cfm

for distribution. However, international experience suggests that assets held in schemes overseas are not all reclaimed.

IMPLEMENTING A VOLUNTARY SCHEME

Who is responsible?

1.64 Different organisations are responsible for different aspects of the scheme:

- HM Treasury is responsible for the passage of the proposed Bill through Parliament, which will facilitate the scheme;
- the extension of the Banking Code to cover accounts potentially affected by the scheme is the responsibility of the bank and building society sector. An independent review of the Banking Code is currently underway. HM Treasury is actively involved in the review and has underlined the importance of the revising the Banking Code to take account of the unclaimed assets scheme;
- the BBA and BSA are responsible for identifying or setting up the scheme's reclaim fund. Once a reclaim fund is established the success of the scheme will depend on whether individual banks and building societies transfer money to it;
- assets will be divided for distribution on a UK wide basis. Ministers in the Devolved Administrations will be responsible for determining priority spending areas for Scotland, Wales and Northern Ireland; and
- BIG will be responsible for distributing the assets transferred to it by the scheme's reclaim fund across the UK.

Aims of implementation

1.65 The aims of implementation are for the scheme to become operational so that communities affected by the scheme's distribution priorities will benefit from funding otherwise unavailable, affected account holders will be able to claim their money back and the scheme is transparent about which institutions participate and how.

Timetable

1.66 The Bill to facilitate the proposed scheme was published alongside this impact assessment. Royal Assent may be given in the second half of 2008. Once Royal Assent is received secondary legislation will need to be made. This will primarily consist of an amendment to the Regulated Activities Order making one or more of the activities of a reclaim fund a regulated activity for the purposes of the Financial Services and Markets Act 2000. The FSA will consult on its rules associated with the new regulated activity. The BBA and BSA are taking the lead to identify or set up a reclaim fund. Once this has been done a reclaim fund will need to apply to the FSA for authorisation. Subject to meeting regulatory requirements, and setting up appropriate agency agreements with eligible financial institutions, a reclaim fund will be able to operate.

Stakeholders

1.67 The bank and building society sector has a key role in implementing the non-statutory aspects of the scheme, and on an individual basis, participating in the scheme.

Other stakeholders will be affected by the operation of the scheme and so have an interest in its implementation. These are consumers, third sector organisations, the FSA and government bodies associated with distributing money to third sector organisations. In addition, businesses that provide financial institutions with customer tracing services and government organisations responsible for administering existing arrangements affecting dormant accounts also have an interest in an unclaimed assets scheme.

Communication

1.68 An unclaimed assets scheme was a 2005 Labour Party manifesto commitment. Since this time HM Treasury has been in discussion with the bank and building society sector to consider how a scheme could be set up and operate. HM Treasury has also discussed the proposed scheme with consumer groups and third sector organisations. In March and May 2007 HM Treasury published two consultation documents setting out how an unclaimed assets scheme might work. The responses to these consultations have informed the preparations of the Bill to facilitate the scheme and the elements of the scheme that build on existing self-regulatory processes and distribution mechanisms.

Risk

1.69 That the bank and building society sector does not participate.

MONITORING, ENFORCEMENT AND SANCTIONS FOR A VOLUNTARY SCHEME

1.70 This section deals with how the scheme will be monitored.

MECHANISM	PROCESSES	HOW COMPLIANCE WILL BE ASSESSED	WHO IS RESPONSIBLE
How banks and building societies participate in the scheme	Banking Code: financial institutions will be obliged to treat customers affected by the scheme according to the updated sections in the Banking Code relevant to the scheme.	Whether participating institutions meet the requirements in the Banking Code relating to scheme.	Banking Code Standards Board (BCSB) regulates financial institutions subscribing to the Banking Code.
	Agency agreements: it is envisaged that individual participating institutions will have agency agreements with a reclaim fund. These agreements are expected to include a requirement that banks and building societies provide an audit certificate of unclaimed assets transferred to the scheme.	Whether an institution is included in a reclaim fund's annual disclosure of participating institutions.	Third-party auditors: will be responsible for auditing assets transferred to and from the scheme according to the agency agreements participating institutions have with a reclaim fund.

Reclaim fund disclosure: Provision will be made in the legislation for a reclaim fund to publish information about which institutions have transferred money to it, how much money individual institutions have transferred, how much they have reunited and the value of assets transferred to BIG.

Smaller institutions disclosure: institutions that take up the option for smaller institutions will be required to disclose which charities they transfer money to and how much.

Whether a reclaim fund publishes the information or not.

Whether these institutions have disclosed which charities they have transferred money to and how much in their annual reports.

A reclaim fund's board of directors will be responsible for publishing this information.

Building Societies:
Directors: Under the Building Society Act 1986 building society directors are required to lay the annual accounts before the society's annual general meeting.

Auditors: the Act requires the society's auditors to report to the society's members on the annual accounts, including whether they have been properly prepared in accordance with the Act.

Banks:
Directors: the Companies Act 2006 (which replaces the Companies Act 1985) will require directors to send annual accounts and report to all company members (and in the case of public companies, to lay them before a general meeting) and file them at Companies House. The relevant sections of the Act will commence April 2008.

Auditors: A company's auditors have to report to company members on whether the accounts give a true and fair view of the business and have been properly prepared in accordance with the relevant requirements.

Financial Reporting Review Panel: FRRP has legal authority to review companies' accounts and reports and if necessary go to court to compel a company to revise its accounts or reports.

			The FRRP deals with the accounts and reports of large public and private companies.
Prudential arrangements of a reclaim fund	FSA: a reclaim fund will need to be authorised by the FSA, which will be subject to the fund meeting certain regulatory requirements.	Whether a reclaim fund can meet reclaim applications from account holders affected by the scheme.	The FSA will monitor whether a reclaim fund meets the relevant regulatory requirements.
How assets are invested in the community by BIG	Secretary of State: S/he will have responsibility for monitoring the scheme administered by BIG, and for making directions to BIG for the distribution of money in England. Devolved Administrations: these will be responsible for issuing directions for the distribution of money in each of their countries.	There will be clear and transparent disclosure of the distribution of assets within the annual report which BIG is required to submit to the Secretary of State and the Devolved Administrations. BIG is also required to submit its accounts to the Secretary of State, the Comptroller and Auditor General and the Devolved Administrations.	The relevant ministers in each country according to the responsibilities previously set out.

Frequency 1.71 The timing of these arrangements will be for the organisations concerned with regulating the different aspects of the scheme.

Feedback mechanism 1.72 Consumers affected by the proposed scheme will be able to complain to their financial institution as usual. They will also have recourse to the Financial Ombudsman Service. The level and type of complaints will gauge the scheme’s effectiveness on protecting consumers.

Enforcement

1.73 The scheme contains no statutory enforcement provisions and instead will rely on existing self-regulatory mechanisms such as the BCSB. However, the proposed legislation will require a reclaim fund to apply for FSA authorisation before it can carry on the activities of a reclaim fund. FSA authorisation will bring the reclaim fund within the FSA’s supervision and enforcement regime. The reclaim fund will also be required to be a company, so the usual framework of company law will also apply to its operation. The Government believes that the incentives in legislation will be sufficient to ensure that a prudent reclaim fund will only conclude agency agreements that set out in detail the process for dealing with any breaches, and also require external audits of transfers of funds to the scheme. The Government is working constructively with the bank and building society sector on the detail of the agency agreements. One of the conditions for treating liability to a customer as extinguished on transfer of money will be that a reclaim fund consents to the transfer. This will mean that a reclaim fund is able to set the terms on which transfer is made.

Sanctions

1.74 The scheme contains no statutory sanctions, and instead, will primarily utilise and build on existing BSCB and FSA arrangements.

MONITORING, ENFORCEMENT AND SANCTIONS FOR A COMPULSORY SCHEME

1.75 If the scheme were compulsory, in addition to complying with the scheme's obligations banks and building societies might also need to prove compliance to a regulatory authority at periodic intervals. This could go beyond the arrangements proposed for the preferred voluntary option through the Banking Code and agency agreements it is envisaged financial institutions will have with a reclaim fund. A compulsory scheme could include a statutory inspection regime and fines or criminal sanctions for non-compliance.

TESTS

Competition impact assessment

1.76 The proposed legislation will enable financial institutions, if they choose, to transfer assets into the scheme. The value of the assets likely to be released is very small in comparison with the total assets of the banking sector.⁸ This, and the voluntary nature of the scheme suggest there is unlikely to be any significant competition impact.

1.77 It is likely that the value of the assets caught by a compulsory scheme using a 15 year definition would also be small in comparison with the total assets of the banking sector. However, if a compulsory scheme necessitated institutions changing their systems in order to comply with it, this could have a disproportionate effect on some smaller institutions.

Small firms impact test

1.78 As the proposed scheme is voluntary, small firms will not be compelled to take part. Turnover, balance sheet size or number of employees defines small firms. The most relevant measure for financial institutions affected by the scheme is balance sheet size. In this context small firms are those with a balance sheet total of not more than £11.4m.⁹ It is unlikely any of the financial institutions likely to participate in an unclaimed assets scheme would be a small firm under this measure.

Human Rights test

1.79 The proposed legislation raises issues in relation to Article 1 of the First Protocol to the ECHR (the right to peaceful enjoyment of possessions). The legislation is considered compatible with Article 1 on the basis that any interference in customers' contract rights is justified in the public interest on the basis that the scheme will enable

⁸ Estimates from the BBA suggest that the value of unclaimed assets in bank accounts currently amount to £250-£350 million. The BBA estimates that this may constitute 0.05% - 0.07% of the £535 billion of retail banking and savings balances held by the nine major banking groups. The BSA has separately advised that unclaimed assets held within building society accounts could be up to £150 million.

⁹ SI 2004 No.16 – The Companies Act (Accounts of Small and Medium Sized Enterprises and Audit Exemption)(Amendment) Regulations 2004.

money to be distributed for the public benefit. The scheme provisions will be established in primary legislation and via the Banking Code and customers will have the right to reclaim their money under the scheme. The legislation also contains provisions enabling information to be transferred by banks and building societies to a reclaim fund, which raises issues under Article 8 of the ECHR (dealing with privacy). The legislation is considered compatible on the basis that the purpose of any transfer of information is restricted to enabling a reclaim fund to carry out its function of repaying customers. This condition is set out in the legislation and is necessary in order to enable a reclaim fund to deal efficiently with claims for payment. In practice, the need for transfer of information will be reduced by the agency arrangements under which banks and building societies will handle applications on the reclaim fund's behalf.

Impact on consumers

1.80 The impact on consumers has been carefully considered. The scheme is intended to be without cost to consumers and includes a number of measures to protect affected account holders.

1.81 Responses to the scheme's consultations generally welcomed these protections. However, some highlighted that the processes for reclaiming money needed to be inclusive of hard to reach consumers and that publicity surrounding the pre-scheme publicity campaign should provide a consistent message on how dormant accounts can be reclaimed free of charge. Reuniting people with their accounts is one of the principles underpinning the scheme. As part of setting up the scheme the bank and building society sector has considered how account holders can be reunited with their accounts. The Government has written to the BBA, BSA and NS&I to encourage them to work together to consider how reuniting arrangements could be simplified and made more accessible. We welcome the bank and building society sector's activities prior to the launch of the proposed scheme, including efforts to establish a single customer interface.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No

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