

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Dormant Bank and Building Society Accounts Bill as brought from the House of Lords on 27th February 2008. They have been prepared by Her Majesty's Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. There are many bank and building society accounts that are lying dormant and unclaimed, often because people have forgotten about them. A number of countries have introduced unclaimed assets schemes to manage such accounts. These include Australia, Canada, Ireland, New Zealand, Spain and the United States. These schemes have a variety of different features.
4. It was announced in the UK 2005 Pre-Budget Report that the Government had taken the view that an unclaimed assets scheme should be established in the UK. The objective was a scheme which both preserved the rights of the individual customer and at the same time allowed unclaimed assets to be reinvested in the community.
5. The Treasury have undertaken two consultations with regard to the establishment of an unclaimed assets scheme. The first, "A UK Unclaimed Asset Scheme: a consultation", was published in March 2007. The second consultation "Unclaimed assets distribution mechanism: a consultation" was published in May 2007.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

6. The Treasury Select Committee of the House of Commons has conducted an inquiry into unclaimed assets. It published its report in August 2007. The Government's response to the Committee was published in October 2007.

7. Arrangements already exist under UK law for dealing with dormant bank accounts belonging to charities. Under section 28 of the Charities Act 1993, the Charity Commission has powers in England and Wales to direct funds held in dormant charity accounts to be transferred to another charity. Similar powers exist for the Office of the Scottish Charity Regulator.¹ The Charities Bill, which was introduced in the Northern Ireland Assembly on 10th December 2007, will make corresponding provision in Northern Ireland.

8. Arrangements also exist for ownerless property (known as bona vacantia), to pass by law to the Crown. Bona vacantia includes assets that belonged to dissolved companies and to people who have died intestate, with no known kin.

SUMMARY

9. The purpose of the Bill is to set up the framework for a scheme under which money in dormant bank and building society accounts can be distributed for the benefit of the community, whilst ensuring the right of owners to reclaim their money is protected. A dormant account is an account on which there have been no customer initiated transactions for 15 years.

10. A deposit in a bank or building society account constitutes a debt owed by the bank or building society to its customer. Although banks and building societies are free to make use of money received from customers (subject to prudential rules which aim to ensure the institution always retains an adequate capital base) the institution remains liable to repay the debt to its customer indefinitely. There is an exception to this in relation to accounts governed by Scots law, where rules under the Prescription and Limitation (Scotland) Act 1973 provide for liability to be extinguished after certain specified periods during which no relevant claim or relevant acknowledgement of the debt has been made.

11. The purpose of the Bill is to enable banks and building societies to cancel their liability to repay a customer where the money in a dormant account is transferred to a reclaim fund. The customer's right to repayment will be exercisable instead against the reclaim fund. This cancellation of liability is required in order to ensure banks and building societies can participate in the scheme without suffering an adverse impact on their balance sheets (on which the liability would otherwise need to be recorded in line with applicable accounting rules). Building society membership rights are preserved.

¹ See sections 47 and 48 of the Charities and Trustee Investment (Scotland) Act 2005.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

12. The Bill establishes the criteria for a body to qualify as a reclaim fund, and provides that a reclaim fund must be authorised by the Financial Services Authority (“the FSA”).

13. An alternative scheme is available for building societies and smaller banks. This permits any building society, or a bank whose group assets were less than £7 billion at the end of the most recent financial year for which accounts have been prepared, to transfer an agreed proportion of a dormant account to a reclaim fund and to distribute the remainder to charities which benefit its local community (or in the case of a building society with a special purpose, to charities with similar purposes).

14. The reclaim fund will transfer surplus money to nominated distributors. The Big Lottery Fund will be the distributor of such sums, although the Secretary of State will have power to replace it and to appoint additional distributors.

15. Sums available for distribution by the Big Lottery Fund will be apportioned by the Secretary of State among England, Wales, Northern Ireland and Scotland. The Big Lottery Fund will be required to distribute money for social or environmental purposes, with more detailed spending areas being identified by each country for its apportioned share of the money available. For England, the spending areas relate to youth services, financial inclusion, financial capability and social investment. The devolved administrations may each identify their spending areas by order. Each country will be able to further specify preferred spending areas by direction.

16. The Bill sets out the powers which the Big Lottery Fund will have to distribute dormant account money. These powers are based on and are broadly similar to the powers it has to distribute money under the National Lottery etc Act 1993.

17. The Bill will be supplemented by other elements of the scheme outside legislation. These include:

- changes to the Banking Code: this Code sets standards of good banking practice for banks and building societies in the UK and is enforced by an independent board, the Banking Code Standards Board. An updated version of the Code is due to be published in March 2008, and the industry has indicated that this will be amended to take account of the scheme;
- agency arrangements: the reclaim fund is expected to enter into agency arrangements with participating institutions reflecting the provisions in the Code; and
- a reuniting campaign: the bank and building society sector is making efforts to reunite dormant account customers with their money in advance of, and after, the launch of the scheme. A new free internet tracing service for customers trying to

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

locate their lost accounts – mylostaccount.org.uk – was launched on a cross-industry basis by the British Bankers' Association, the Building Societies' Association and National Savings & Investments on 30th January 2008.

18. On 8th November 2007 the British Bankers' Association published a statement on the responsibilities of the industry to deliver the non-legislative elements of the scheme, including the reuniting campaign, revising the Banking Code and leading on the selection or establishment of a body to act as the reclaim fund.

OVERVIEW OF THE STRUCTURE

19. The Bill is divided into three Parts. Part 1 (clauses 1-16) deals with the cancellation of a bank or building society's liability to its customer and the transfer of money to a reclaim fund. Part 2 (clauses 17-28) deals with the distribution of money by the Big Lottery Fund for social or environmental purposes. Part 3 (clauses 29-33) contains the final provisions of the Bill.

TERRITORIAL EXTENT

20. The Bill extends to the whole of the UK. Clauses 19 to 22 contain specific provisions for each country of the United Kingdom respectively.

21. This Bill contains provisions that trigger the Sewel Convention. The provisions relate to the delegation to the Scottish Ministers of the power to restrict the purposes for which, and the kinds of person to whom, dormant account money apportioned to Scotland may be distributed. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. On 24th January 2008, the Scottish Parliament passed a Legislative Consent Motion, agreeing that the provisions in the Bill that relate to the distribution of dormant account money in Scotland should be considered by the UK Parliament. The consent of the Scottish Parliament will be sought again if there are amendments relating to the distribution of dormant account money in Scotland which trigger the Sewel Convention.

TERRITORIAL APPLICATION: WALES

22. The Bill applies generally to Wales. Part 2 of the Bill concerns distribution of money, and clause 20 contains specific provisions conferring on the Welsh Ministers the power to restrict by order the distribution purposes and kinds of recipient for Welsh expenditure. Unlike England, the purposes and kinds of recipient of dormant account expenditure in Wales will not be set out on the face of the Bill, as they have not yet been determined. This order must be approved by the National Assembly for Wales.

23. In addition to the power conferred under clause 20, subsection (6)(a) of clause 23 gives Welsh Ministers power to specify further by direction to the Fund the particular purposes and kinds of recipient for money apportioned to Wales. And

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

subsection (6) of clause 27 gives the Welsh Ministers the power to instruct the Fund to deduct from money apportioned for Welsh expenditure such amounts as the Welsh Ministers determine to be appropriate to defray their expenses incurred under the Bill.

24. The Bill also requires the Secretary of State to consult the Welsh Ministers on various matters. Clause 18(5) requires the Secretary of State to consult the Welsh Ministers before making an apportionment of dormant account money. The Secretary of State must consult the Welsh Ministers before exercising his power in clause 24 to prohibit distribution where the exercise of the power would relate to Welsh expenditure or would be likely to affect persons in Wales. The Secretary of State must also consult the Welsh Ministers before using his power under clause 25 to add or remove distributors.

25. Paragraph 2 of Schedule 3 confers on the Welsh Ministers the power to instruct the Fund to prepare, adopt and modify strategic plans in relation to Welsh apportioned expenditure. Where the Fund adopts a strategic plan it must send a copy to the Welsh Ministers, who must lay a copy before the National Assembly for Wales.

26. Paragraph 9(4)(b) of Schedule 3 requires the Welsh Ministers to lay the Fund's annual report before the National Assembly for Wales. Paragraph 10(2)(b) of Schedule 3 requires the Fund to send a copy of its accounts to the Welsh Ministers, and paragraph 10(4)(b) requires that the Comptroller and Auditor General must lay the accounts, and a report on them, before the National Assembly for Wales.

COMMENTARY ON CLAUSES AND SCHEDULES

Part 1: Transfer of balances in dormant accounts

Clause 1 Transfers of balances to reclaim fund

27. This clause 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 clause 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). Clauses 7-11 contain definitions of a number of terms relevant to this provision, including "authorised", "building society", "bank", "balance", "account" and "dormant".

28. *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 clause 9(2) which sets

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

out the customer's entitlement to interest (and permits the deduction of charges), and clause 13, which explains the effects of events such as insolvency of the bank or building society on the calculation of the customer's entitlement.

29. 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.

Clause 2: Transfer of balances to charities, with proportion to reclaim fund

30. This clause establishes an alternative scheme for all building societies and for smaller banks which meet the assets test in clause 3. There are currently, 59 building societies² established in the UK and perhaps a small number of banks which would qualify to participate in this alternative scheme. These institutions may also participate in the main scheme under clause 1.

31. *Subsections (1) and (2)(a)* provide that the liability of a building society or smaller bank 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. "Agreed proportion" is defined by subsection (3). Both the reclaim fund and the charity (or charities) must consent to the transfers.

32. 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.

33. *Subsections (4) and (5)* 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.

² A directory of building societies can be found on the Building Societies Association's website: www.bsa.org.uk/keystats/buildingsocietysector.htm

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

34. *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 clause 1(2)(b), clause 2(2)(b) should be read subject to the provisions of clauses 9(2) and 13.

35. As explained in relation to clause 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 (clause 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.

36. 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.

37. Building societies and smaller banks 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 clause 15 of the Bill for this information to be included in their annual reports.

Clause 3: The assets-limit condition

38. This clause sets out the assets-limit condition with which a bank must comply in order to participate in the alternative scheme under clause 2.

39. *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 clause 7. Once a bank’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.

40. *Subsection (2)* explains how the assets-limit condition is applied in relation to banks which are members of a group (as defined by clause 7).

41. *Subsection (3)* explains how the assets-limit condition is applied where the bank’s accounts are not reported in sterling (for example if it is a UK branch of a foreign bank).

42. *Subsections (4) and (5)* contain an order-making power to allow the Treasury to amend the assets limit.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

Clause 4: Effect of balance transfer on membership rights

43. 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.

44. *Subsections (1)-(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 clause 1 or 2, until the point at which the customer is repaid.

45. *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.

46. *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.

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

47. A "reclaim fund" will receive money from dormant accounts transferred from individual banks and building societies under clauses 1 and 2. Clause 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 clause 25).

48. 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.

49. 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

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

reasonable, that no distributions are made to its members and that information about levels of participation in the dormant accounts schemes is published.

50. *Subsection (4)* of clause 5 contains a direction-making power for the Treasury to ensure compliance by a reclaim fund with its articles of association. Clause 6 requires the Treasury to lay before Parliament any directions it gives under this subsection.

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.

Clause 6: Parliamentary accountability of the reclaim fund

52. This clause requires the reclaim fund to send specified information, including its annual report, to the Treasury as soon as possible. The Treasury must lay this information before Parliament, together with any directions it has given to the reclaim fund under clause 5(4).

Clause 7: Interpretation of Part 1

53. This clause defines a number of terms used in Part 1 of the Bill, including "building society".

Clause 8: "Bank"

54. This clause explains which banks are eligible to participate in the schemes under clauses 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.

55. *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

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

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.

Clause 9: “Balance”

56. This clause 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 clauses 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).

Clause 10: “Account”

57. This clause explains which accounts are eligible to be included in the dormant accounts schemes under clauses 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.

Clause 11: “Dormant”

58. This clause explains when an account will be regarded as dormant for the purposes of clauses 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 clause. 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. It is intended that the Banking Code will be revised to require banks and building societies to explain to customers their approach to deciding which accounts will be treated as dormant.

59. *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).

60. *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.

61. *Subsection (3)* sets out further matters to be taken in to account when determining whether an account is dormant.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

62. Subsection (4) 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).

63. *Subsection (5)* 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.

Clause 12: Triennial report to Parliament

64. This clause requires the Treasury to publish a report every three years on the operation of the scheme and to lay a copy of the report before Parliament.

65. *Subsections (2)-(4)* set out specific matters which must be included in the report, including the desirability and practicality of establishing similar schemes for other types of assets and improvements which could be made to the scheme. The Treasury is required to consult persons with relevant knowledge before preparing its report.

Clause 13: Customer's rights preserved on insolvency etc of bank or building society

66. This clause ensures that a dormant account holder is entitled to repayment of his or her 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.

Clause 14: Disclosure of information

67. This clause 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 clause 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

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

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.

Clause 15: Banks making transfers under section 2: information in directors' reports

68. This clause requires banks which participate in the alternative scheme for smaller institutions and transfer money under clause 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 are made under section 75 of the Building Societies Act 1986.

Clause 16 and Schedule 2: Amendments to the Financial Services and Markets Act 2000

69. Clause 16 introduces Schedule 2, which makes amendments to the Financial Services and Markets Act 2000 ("FSMA").

70. *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 activity of paying customer claims under clauses 1 and 2 as a "regulated activity" under section 22 of FSMA, by way of an amendment to the Regulated Activities Order 2001 (SI 2001/544), and will consult on this following Royal Assent. This is to enable a reclaim fund to be authorised by the FSA.

71. *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.

72. *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.

73. Paragraph 6 provides that where an authorised reclaim fund defaults on its obligation to repay a customer, following a claim made under clauses 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.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

74. 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

Clause 17: Distribution of dormant account money by Big Lottery Fund

75. This clause 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 and manages and distributes about £600 million of lottery funds each year.

76. *Subsection (3)* allows the Fund to distribute assets to recipient bodies in the form of grants or loans, or through other arrangements.

77. *Subsection (5)* enables the Fund to distribute dormant account money to create endowments, including permanent endowments.

Clause 18: Apportionment of dormant account money

78. This clause 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.

Clauses 19- 22: Distribution of money for meeting English, Welsh, Scottish and Northern Ireland expenditure

79. Clause 17 sets out the overall purposes for which dormant accounts money may be distributed (i.e. for a social or environmental purpose). Clause 19 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.

80. 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 Bill. Instead, clauses 20, 21 and 22 give Welsh Ministers, Scottish Ministers and the Northern Ireland Department of Finance and Personnel respectively the

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

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.

81. It is envisaged that the particular purposes and recipients set out in clause 19 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 clause 23.

Clause 23: Directions to Big Lottery Fund

82. This clause 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 clause are broadly similar to the powers to give directions under the National Lottery etc Act 1993, save that *subsection (4)(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 and a draft statutory instrument containing the direction must be approved by both Houses of Parliament before any direction is given under this clause.

83. Only the Secretary of State has power to issue directions under *subsection (5)* relating to operational matters such as financial management, staffing and accounts.

Clause 24: Power to prohibit distribution in certain cases

84. This clause 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.

85. *Subsection (2)* requires the Secretary of State to consult the devolved administrations before issuing an order that it considers could impact on expenditure or affect persons within Scotland, Wales and Northern Ireland.

86. *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.

Clause 25: Power to add or remove distributors

87. This clause 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 clause 23 or contravention of a prohibition order made under clause 24.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

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.

Clause 26: Power of Big Lottery Fund to enter into arrangements

88. 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 clause 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 (5)(a) of clause 23 gives the Secretary of State the power to give directions restricting the nature of the arrangements into which the Fund can enter.

89. *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 Bill. 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.

Clause 27: Expenses

90. This clause allows the Fund to defray any expenses incurred in carrying out its obligations set out in the Bill. Such expenses will be deducted from dormant account money before it is apportioned for distribution.

91. This clause also allows the Secretary of State to reclaim expenses incurred in carrying out the functions set out in this Bill. The combined effect of clause 18(3) and *subsection (3)* of this clause 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 Bill from the sums apportioned for distribution in their country.

Clause 28: Interpretation of Part 2

92. This clause defines a number of terms used in Part 2 of the Bill.

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

93. 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

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

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 Bill.

94. 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.

95. 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.

96. *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.

97. *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.

98. *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 their 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.

99. *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.

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

FINANCIAL EFFECTS OF THE BILL

100. The expenses of the Big Lottery Fund, the Secretary of State and the devolved administrations incurred in consequence of this Bill will be met out of money held by the Big Lottery Fund by virtue of clause 27 of the Bill. Therefore there will be no direct effect on public expenditure as a result of this Bill.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

101. It is not possible to say at this stage what the exact impact of the Bill on public service manpower might be, but it is not expected to have a significant effect on public service manpower. The Big Lottery Fund, a non-departmental public body, will employ staff to distribute dormant account money available for disbursement. The number of staff needed will be determined by the amount of funding available and the programmes designed to distribute it.

SUMMARY OF IMPACT ASSESSMENT

102. The Dormant Bank and Building Society Accounts Bill facilitates the transfer of monies in dormant bank accounts for distribution in the community, whilst safeguarding consumers' rights to reclaim their money. Participation in the scheme established by the Bill is not compulsory, and so the Bill does not impose any direct costs on industry or other groups. A full analysis is available to the public from http://www.hm-treasury.gov.uk/Consultations_and_Legislation/ria/consult_ria_index.cfm, and to Members from the Vote Office.

EUROPEAN CONVENTION ON HUMAN RIGHTS

103. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights.

104. The Exchequer Secretary to the Treasury, Angela Eagle MP, has made the following statement: "In my view the provisions of the Dormant Bank and Building Society Accounts Bill are compatible with the Convention rights".

105. The Bill raises issues under Article 8 (respect for private life) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions). The Bill is compatible with these rights for the reasons summarised below.

Article 1 of the First Protocol

106. Clauses 1 and 2 of the Bill provide for the extinguishment of a bank or building society's liability to repay a dormant account holder where the balance on the account is transferred to a reclaim fund. This affects the customer's contractual rights which constitute property protected by Article 1 of the First Protocol ("Article 1"). In order to be compatible with Article 1, this interference with a person's

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

property rights must be in the public interest and subject to the conditions provided for by law. The interference in this case does meet those requirements and so is compatible with Article 1. This is primarily because the customer has a right to repayment, from the reclaim fund.

107. Also, the Bill meets the public interest requirement because the effect of the legislation is to make funds which have been left untouched in bank and building society accounts for over 15 years available for the benefit of the community. The Bill provides for the money to be distributed by the Big Lottery Fund for social and environmental purposes (subject to the need to maintain sufficient reserves to meet anticipated claims for repayment by customers). In the case of the alternative scheme for building societies and smaller banks, surplus money will be distributed to charities.

108. The safeguards for dormant account customers will be set out in legislation. Clauses 1(2)(b) and 2(2)(b) of the Bill provide customers with a right to repayment by the reclaim fund. Clause 9 ensures that they will be entitled to payment of any interest which would have accrued under the terms of their original account. Clauses 1 and 2 require that the reclaim fund be authorised by the Financial Services Authority for the purposes of the Financial Services and Markets Act 2000, which will mean that it is subject to capital requirements designed to protect against insolvency. Customers will also have access to the Financial Ombudsman Service for the resolution of disputes and be eligible to claim against the Financial Services Compensation Scheme, subject to meeting the usual qualifying conditions. Individual banks and building societies are expected to enter into agency arrangements with a reclaim fund and continue to manage the customer relationship, and it is intended that the scheme will be reflected in revisions to the Banking Code. Clause 4 of the Bill will preserve the rights of building society members.

Article 8

109. Clause 14 enables information about a customer's account to be transferred by a bank or building society to the reclaim fund, where this would otherwise be in breach of a legal restriction, for example a bank's duty of confidentiality to its customer. This amounts to an interference with Article 8 rights. In order not to breach the ECHR, the interference must be in accordance with law and justified as necessary for pursuing a legitimate aim.

110. Under the Bill the transfer of information is only permitted where the information is needed in order for it to fulfil its function of meeting a claim for payment. The provision is necessary to enable a reclaim fund to verify claims for payment by customers whose balances have been transferred and to protect against fraudulent claims. It therefore fulfils the conditions required by Article 8. In practice, the transfer of information should be minimised by the arrangements established under the Banking Code for banks and building societies to continue to be responsible for maintaining customer records and handling claims for repayment on behalf of a reclaim fund. However, in exceptional cases the transfer of information may be

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

necessary, for example in the case of a dispute in which the reclaim fund is directly involved.

COMMENCEMENT

111. Parts 1 and 2 of the Bill will come into force following an order or orders made by the Treasury. The order (or orders) may provide for different provisions of the Bill to come into force at different times.

112. Part 3 will come into force on Royal Assent.

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS BILL [HL]

EXPLANATORY NOTES

These notes refer to the Dormant Bank and Building Society Accounts Bill [HL] as brought from the House of Lords on 27th February 2008 [Bill 80]

*Ordered, by The House of Commons,
to be Printed, 27th February 2008.*

© Parliamentary copyright House of Commons 2008
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ
Fax 01603 723000*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON - THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited

£x.00