



# Dormant Bank and Building Society Accounts Act 2008

## 2008 CHAPTER 31

### PART 1 **U.K.**

#### TRANSFER OF BALANCES IN DORMANT ACCOUNTS

##### *The general scheme*

### **1** Transfer of balances to reclaim fund **U.K.**

- (1) This section applies where—
  - (a) a bank or building society transfers to an authorised reclaim fund the balance of a dormant account that a person (“the customer”) holds with it, and
  - (b) the reclaim fund consents to the transfer.
- (2) After the transfer—
  - (a) the customer no longer has any right against the bank or building society to payment of the balance, but
  - (b) the customer has against the reclaim fund whatever right to payment of the balance the customer would have against the bank or building society if the transfer had not happened.
- (3) The reference in subsection (1) to an account that a person holds is to be read as including an account held by a deceased individual immediately before his or her death.

In such a case, a reference in subsection (2) to the customer is to be read as a reference to the person to whom the right to payment of the balance has passed.

*Status: Point in time view as at 12/03/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Dormant Bank and Building Society Accounts Act 2008, Part 1. (See end of Document for details)*

### Commencement Information

**II** S. 1 in force at 12.3.2009 by S.I. 2009/490, art. 2

### *Alternative scheme for smaller institutions*

## **2 Transfer of balances to charities, with proportion to reclaim fund** **U.K.**

- (1) This section applies where—
- (a) a smaller bank or building society transfers to an authorised reclaim fund an agreed proportion of the balance of a dormant account that a person (“the customer”) holds with it,
  - (b) the bank or building society transfers the remainder of that balance to one or more charities,
  - (c) the charity, or each of the charities, either—
    - (i) is a charity that the bank or building society considers to have a special connection with it, or
    - (ii) undertakes to apply the money in question for the benefit of members of communities that are local to the branches of the bank or building society,
  - (d) the reclaim fund consents to the transfer to it, and
  - (e) the charity, or each of the charities, consents to the transfer to it.
- (2) After the transfers—
- (a) the customer no longer has any right against the bank or building society to payment of the balance, but
  - (b) the customer has against the reclaim fund whatever right to payment of the balance the customer would have against the bank or building society if the transfers had not happened.
- (3) The reference in subsection (1) to an account that a person holds is to be read as including an account held by a deceased individual immediately before his or her death.
- In such a case, a reference in subsection (2) to the customer is to be read as a reference to the person to whom the right to payment of the balance has passed.
- (4) In subsection (1) “agreed proportion” means a proportion agreed between the bank or building society and the reclaim fund.
- In agreeing that proportion, the reclaim fund must take account of the need for the fund to have access at any given time to enough money to enable it to meet whatever repayment claims it is prudent to anticipate.
- (5) For the purposes of this section—
- (a) “repayment claim” means a claim made by virtue of subsection (2)(b);
  - (b) a “smaller” bank or building society is one that meets the assets-limit condition (see section 3);
  - (c) a charity has a “special connection” with a bank if (and only if) the purpose, or any of the main purposes, of the charity is to benefit members of communities that are local to the branches of the bank;

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- (d) a charity has a “special connection” with a building society if (and only if) the purpose, or any of the main purposes, of the charity—
  - (i) is to benefit members of communities that are local to the branches of the building society, or
  - (ii) is especially consonant with any particular purposes that the building society has.
- (6) The reference in subsection (5)(d)(ii) to particular purposes does not include the purpose mentioned in section 5(1)(a) of the Building Societies Act 1986 (c. 53) (making loans that are secured on residential property and substantially funded by members).

**Commencement Information**

**I2** S. 2 in force at 12.3.2009 by S.I. 2009/490, art. 2

**3 The assets-limit condition** **U.K.**

- (1) A bank or building society meets the assets-limit condition if the aggregate of the amounts shown in its balance sheet as assets on the last day of the latest financial year for which it has prepared accounts is less than £7,000 million.
- (2) In relation to a bank or building society that was a member of a group on the day referred to in subsection (1), that subsection has effect as if the aggregate of the amounts shown in its balance sheet as assets on that day also included the aggregate of the amounts shown in each group member's balance sheet as assets—
  - (a) on that day, or
  - (b) (in the case of a group member whose financial year did not end on that day) on the last day of its latest financial year to end before that day.
- (3) Where a balance sheet for a particular day shows amounts in a currency other than sterling, for the purposes of this section the amounts are to be converted into sterling at the London closing exchange rate for that currency and that day.
- (4) The Treasury may by order amend the figure in subsection (1).
- (5) An order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

**I3** S. 3 in force at 12.3.2009 by S.I. 2009/490, art. 2

*Shareholding members of building societies*

**4 Effect of balance transfer on membership rights** **U.K.**

- (1) This section applies where a person (“the member”) holds a share in a building society represented by an account with the society, and either—
  - (a) a transfer is made to a reclaim fund with the result that section 1 applies in relation to the account, or

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- (b) transfers are made to a reclaim fund and one or more charities with the result that section 2 applies in relation to the account.
- (2) After the transfer or transfers the member is to be treated as having whatever share in the building society the member would have if the transfer or transfers had not happened (and accordingly as having whatever rights, including distribution rights, a holder of that share would have as such).
- (3) In subsection (2) “distribution rights” means rights to any distribution arising as mentioned in section 96 (amalgamation or transfer of engagements) or 100 (transfer of business) of the Building Societies Act 1986.
- (4) Subsection (2) ceases to apply where the balance of the account is paid out following a claim made by virtue of section 1(2)(b) or 2(2)(b).
- (5) But where the balance of the account is paid out following such a claim and, as soon as reasonably practical, the money is—
- (a) paid back into the account, or
  - (b) paid into another share account with the building society in the member's name,
- subsection (2) continues to apply until the account is credited with the money.
- (6) Where, after the transfer or transfers referred to in subsection (1), the building society is succeeded by another building society as a result of an amalgamation or transfer of engagements, a reference in subsection (2) or (5) to the building society is to be read, in relation to any time after the amalgamation or transfer of engagements, as a reference to the successor building society (or to the successor building society of the successor, in relation to any time after a subsequent amalgamation or transfer; and so on).

#### Commencement Information

**I4** S. 4 in force at 12.3.2009 by S.I. 2009/490, art. 2

### *Reclaim funds*

## 5 Functions etc of a reclaim fund **U.K.**

- (1) A “reclaim fund” is a company the objects of which are restricted by its articles of association to the following—
- (a) the meeting of repayment claims;
  - (b) the management of dormant account funds in such a way as to enable the company to meet whatever repayment claims it is prudent to anticipate;
  - (c) the transfer of money to the body or bodies for the time being specified in section 16(1), subject to the need for the company—
    - (i) to have access at any given time to enough money to meet whatever repayment claims it is prudent to anticipate,
    - (ii) to comply with any requirement with regard to its financial resources that is imposed on it by or under any enactment, and
    - (iii) to defray its expenses;

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- (d) objects that are incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of dormant account funds).
- (2) Schedule 1 makes further provision about provision that must be made in the articles of association of a reclaim fund.
- (3) An alteration by a reclaim fund of its articles of association is ineffective if it would result in—
- (a) the company ceasing to have objects restricted to those mentioned in subsection (1);
  - (b) the company's articles of association not containing any provision that they are required to make under Schedule 1.
- (4) The Treasury may give a direction to a reclaim fund requiring it—
- (a) to give effect to any specified object that it has, or
  - (b) to comply with any specified obligation or prohibition imposed on it by a provision that its articles of association are required to make under Schedule 1.
- “Specified” means specified in the direction.
- (5) The Treasury shall lay before Parliament a copy of any direction given under subsection (4).
- (6) In this section—
- “company” has the meaning given by section 1(1) of the Companies Act 2006 (c. 46);
  - “dormant account funds” means money paid to a reclaim fund by banks and by building societies in respect of dormant accounts;
  - “repayment claims” means claims made by virtue of section 1(2)(b) or 2(2)(b).

#### Commencement Information

**I5** S. 5 in force at 12.3.2009 by S.I. 2009/490, art. 2 (with art. 3)

#### *Interpretation etc*

## 6 Interpretation of Part 1 **U.K.**

In this Part—

- “account” has the meaning given by section 9;
- “authorised”, in relation to a reclaim fund, means authorised for the purposes of the Financial Services and Markets Act 2000 (c. 8);
- “balance” has the meaning given by section 8;
- “bank” has the meaning given by section 7;
- “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986 (c. 53);
- “charity” means a body, or the trustees of a trust, established for charitable purposes only;
- “dormant” has the meaning given by section 10;

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“financial year”—

- (a) in relation to a company (other than a building society) within the meaning of the Companies Act 2006, has the meaning given in section 390(1) to (3) of that Act;
- (b) in relation to an undertaking that is not a company within the meaning of that Act (and is not a building society), has the meaning given in section 390(4) of that Act;
- (c) in relation to a building society, has the meaning given in section 117 of the Building Societies Act 1986;

“group” means a parent undertaking and its subsidiary undertakings;

“parent undertaking” and “subsidiary undertaking” have the same meaning as in the Companies Act 2006 (see section 1162 of that Act);

“reclaim fund” has the meaning given by section 5(1).

#### Commencement Information

**I6** S. 6 in force at 12.3.2009 by S.I. 2009/490, art. 2

#### 7 “Bank” **U.K.**

- (1) Subject to subsection (4), “bank” means an authorised deposit-taker that has its head office, or one or more branches, in the United Kingdom.
- (2) In subsection (1) “authorised deposit-taker” means—
  - (a) a person who under Part 4 of FSMA 2000 has permission to accept deposits;
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FSMA 2000 that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.
- (3) A reference in subsection (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.
- (4) “Bank” does not include—
  - (a) a building society;
  - (b) a person who is specified, or is within a class of persons specified, by an order under section 38 of FSMA 2000 (exemption orders);
  - (c) a credit union;
  - (d) a friendly society.
- (5) In this section—
  - “credit union” has the same meaning as in the Credit Unions Act 1979 (c. 34) (see section 1(1) of that Act);
  - “friendly society” has the same meaning as in the Friendly Societies Act 1992 (c. 40) (see section 116 of that Act);
  - “FSMA 2000” means the Financial Services and Markets Act 2000 (c. 8).

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**Commencement Information**

**I7** S. 7 in force at 12.3.2009 by S.I. 2009/490, art. 2

**8 “Balance” U.K.**

- (1) The balance of a person's account at any particular time is the amount owing to the person in respect of the account at that time, after the appropriate adjustments have been made for such things as interest due and fees and charges payable.
- (2) In relation to a time after a transfer has been made as mentioned in section 1(1) or transfers have been made as mentioned in section 2(1), the adjustments referred to in subsection (1) above include those that would fall to be made but for the transfer or transfers.

**Commencement Information**

**I8** S. 8 in force at 12.3.2009 by S.I. 2009/490, art. 2

**9 “Account” U.K.**

- (1) “Account” means an account that has at all times consisted only of money.
- (2) A reference in this Part to an account held with a bank or building society is to an account provided by the bank or building society as part of its activity of accepting deposits.
- (3) In relation to a building society, “account” includes an account representing shares in the society, other than—
  - (a) preferential shares, or
  - (b) deferred shares within the meaning given in section 119(1) of the Building Societies Act 1986 (c. 53).

**Commencement Information**

**I9** S. 9 in force at 12.3.2009 by S.I. 2009/490, art. 2

**10 “Dormant” U.K.**

- (1) An account is “dormant” at a particular time if—
  - (a) the account has been open throughout the period of 15 years ending at that time, but
  - (b) during that period no transactions have been carried out in relation to the account by or on the instructions of the holder of the account.
- (2) But an account is to be treated as not dormant if at any time during that period—
  - (a) the bank or building society in question was under instructions from the holder of the account not to communicate with that person about the account, or
  - (b) under the terms of the account—
    - (i) withdrawals were prevented, or

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- (ii) there was a penalty or other disincentive for making withdrawals in all circumstances.
- (3) For the purposes of subsection (1) an account is to be treated as remaining open where it is closed otherwise than on the instructions of the holder of the account.
- (4) For the purposes of subsection (2)(b)(i) withdrawals are prevented if they are prevented except as permitted by provision made under subsection (4)(d) of section 3 of the Child Trust Funds Act 2004 (c. 6) (requirements to be satisfied by child trust funds).
- (5) The Treasury may by order amend the figure in subsection (1)(a).
- (6) An order under this section may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

**Commencement Information**

**I10** S. 10 in force at 12.3.2009 by S.I. 2009/490, art. 2

*Supplemental*

**11 Customer's rights preserved on insolvency etc of bank or building society** **U.K.**

- (1) Where after a person has acquired a right to payment under section 1(2)(b) or 2(2)(b)—
- the bank or building society in question is dissolved or wound up, or
  - for any other reason the liability that the bank or building society would have to the person (but for the transfer referred to in section 1(1) or the transfers referred to in section 2(1)) is extinguished or reduced,
- the dissolution, winding-up, extinguishment or reduction is to be disregarded for the purposes of section 1(2)(b) or 2(2)(b).
- (2) Subsection (1)(b) does not apply to an extinguishment of liability by prescription under the law of Scotland.

**Commencement Information**

**I11** S. 11 in force at 12.3.2009 by S.I. 2009/490, art. 2

**12 Disclosure of information** **U.K.**

No obligation as to secrecy or other restriction on disclosure (however imposed) prevents a bank or building society from giving to an authorised reclaim fund information needed by the fund to enable it to deal with claims made by virtue of section 1(2)(b) or 2(2)(b).

**Commencement Information**

**I12** S. 12 in force at 12.3.2009 by S.I. 2009/490, art. 2



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### 13 Banks making transfers under section 2: information in directors' reports **U.K.**

- (1) Where—
- (a) the directors of a company that is a bank are required by section 415(1) of the Companies Act 2006 (c. 46) to prepare a report for a particular financial year, and
  - (b) in that year the company made transfers in relation to which section 2 applied, the report must identify each of the charities concerned and specify the amount transferred to each of them.
- (2) The requirements of subsection (1) are to be treated for the purposes of the Companies Act 2006 (c. 46) as requirements of that Act.

#### Commencement Information

**I13** S. 13 in force at 12.3.2009 by S.I. 2009/490, art. 2

### 14 Review and report to Parliament **U.K.**

- (1) The Treasury shall carry out a review of—
- (a) the operation of this Part, and
  - (b) the effectiveness of the efforts made by financial institutions to secure that those entitled to money in inactive accounts are made aware of the fact.
- (2) In reviewing the operation of this Part the Treasury shall in particular consider—
- (a) how many banks and building societies have transferred balances as mentioned in section 1(1) or 2(1);
  - (b) how much money has been transferred and how promptly;
  - (c) how effective have been the arrangements for meeting claims made by virtue of section 1(2)(b) or 2(2)(b).

But the review shall not consider the activities of a reclaim fund in so far as they are regulated activities for the purposes of the Financial Services and Markets Act 2000 (c. 8).

- (3) The Treasury shall make arrangements to enable anyone with an interest in any aspect of the review to make representations, and shall consider all representations received.
- (4) The Treasury shall set out the results and conclusions of the review in a report and lay it before Parliament.
- (5) The report must be laid within three years from the date when a reclaim fund is first authorised.

#### Commencement Information

**I14** S. 14 in force at 12.3.2009 by S.I. 2009/490, art. 2

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### *Amendments*

## **15 Amendments to the Financial Services and Markets Act 2000** **U.K.**

The Financial Services and Markets Act 2000 is amended as set out in Schedule 2.

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#### **Commencement Information**

**I15** S. 15 in force at 12.3.2009 by S.I. 2009/490, art. 2

**Status:**

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**Changes to legislation:**

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