

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS ACT 2008

EXPLANATORY NOTES

SUMMARY

9. The purpose of the Act 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 Act 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.
12. The Act 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 smaller banks and building societies. This permits a bank or building society 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

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

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 Act 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 Act 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 was published in March 2008 and includes provisions to take account of the scheme¹;
 - 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 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.

¹ However, on 4 November 2008 the FSA launched a consultation on regulating retail banking which included the proposal that FSA rules and guidance would replace the parts of the Banking Code which deal with dormant accounts.