

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONTROL OF**  
**BUSINESS TRANSFERS) (REQUIREMENTS ON APPLICANTS) (AMENDMENT)**  
**REGULATIONS 2009**

**2009 No. 1390**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.
  
2. **Purpose of the instrument**
  - 2.1 These Regulations amend regulations 5 and 6 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I. 2001/3625). Regulations 5 and 6 require the giving of notices when making an application to court for an order permitting a bank business transfer scheme. These Regulations apply the requirements of regulations 5 and 6 to an application to court for an order permitting a reclaim fund to transfer its liabilities and assets.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Context**
  - 4.1 The Dormant Bank and Building Society Accounts Act 2008 ("the Act") provides a framework whereby banks and building societies can transfer the balances of dormant bank and building society accounts to a reclaim fund. Once a transfer has been made the customer's right to repayment is exercisable against the reclaim fund.
  - 4.2 The reclaim fund is required to retain sufficient money to meet any repayment claim, and to transfer any surplus money to the Big Lottery Fund for it to distribute for social or environmental purposes.
  - 4.3 Section 15 of and Schedule 2 to the Act amends Part 7 of the Financial Services and Markets Act 2000 ("FSMA") to enable a reclaim fund to transfer its liabilities and its assets to another Financial Services Authority ("FSA") approved reclaim fund with the approval of the court. These Regulations apply certain notice requirements which exist for applications to transfer bank businesses to a reclaim fund's application to transfer its business.
  
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Following consultations in March 2007 and May 2007, the Government legislated to establish a dormant accounts scheme in the UK allowing banks and building societies to make funds available for distribution to the benefit of the community, while ensuring that the right of account holders to reclaim their money is protected. A reclaim fund will receive balances of dormant accounts and retain a proportion to meet claims for repayments, and make the remainder available for distribution for social or environmental purposes. The reclaim fund's core activities will be regulated by the FSA.

7.2 This instrument will impose certain notice requirements which currently apply to transfers of banking businesses to a reclaim fund's transfer of its business to another reclaim fund so that, in the unlikely event that the reclaim fund needs to transfer business to a successor, public notice of the transfer of the reclaim fund's business is given. The effect will be to increase transparency of the scheme.

7.3 As of November 2008, the British Bankers' Association ('BBA') and the Building Societies Association ('BSA') estimate that there may be between £250 million and £350 million of unclaimed funds in banks, and up to £130 million in building societies. These figures, however, are likely to fall as a result of ongoing industry led initiatives to reunite customers with their accounts.

7.4 There is public interest in dormant accounts, especially following the launch of an online gateway by the BBA, BSA and National Savings & Investments for customers to trace dormant accounts at [www.mylostaccounts.org.uk](http://www.mylostaccounts.org.uk) in January 2008, which has received over a quarter of a million trace requests to date. The scheme has been developed with the support of the BBA and BSA.

### ***Consolidation***

7.5 There are no plans to consolidate the instrument that is being amended.

## **8. Consultation outcome**

8.1 The Government consulted on proposals for secondary legislation for a UK dormant accounts scheme in the document 'A UK Dormant Accounts Scheme: a consultation on secondary legislation', which was published in February 2009. The consultation lasted 12 weeks, in accordance with the Code of Practice for written consultations, and closed on 11 May 2009.

8.2 The consultation invited views on proposals to: extend the scope of FSA authorisation and regulation to include particular activities of reclaim funds; place a requirement on building societies participating in the scheme for smaller institutions,

publicly to disclose information in line with the requirements placed on smaller banks by the Act; and extend the notice requirement applicable to banks to cover a proposed business transfer of a reclaim fund.

8.3 All respondents who commented directly on the Government's proposals were supportive of all measures, including, including the extension of the notice requirement applicable to banks to cover a proposed business transfer of a reclaim fund.

## **9. Guidance**

9.1 No guidance has been published in relation to the matters contained in these regulations, because it is not considered that any is required in this case.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment prepared as part of the Treasury's reply to the consultation responses to the February 2009 consultation on secondary legislation is available on the Treasury website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Treasury will undertake a post-implementation review of the UK dormant accounts scheme and, specifically, of the transfer of balances to the reclaim fund, the repayment of customers and the effectiveness of the banking sector's reuniting arrangements. The review will also look at the level of participation by financial institutions in the scheme. A report will be published within three years of the date when a reclaim fund is first authorised.

## **13. Contact**

13.1 Harry Lee at HM Treasury (Tel: 020 7270 4754 or email: [harry.lee@hm-treasury.gsi.gov.uk](mailto:harry.lee@hm-treasury.gsi.gov.uk)) can answer any queries regarding the instrument.