

A UK Unclaimed Asset Scheme: a consultation

March 2007



HM TREASURY



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FOREWORD

Many people forget about, or lose track of, small deposits of money in bank and building society accounts. Despite the efforts of banks and building societies to reunite these funds with their owners, they build up as unclaimed assets in the banking system. Several countries have successfully set up schemes in recent years to enable unclaimed assets such as these to be reinvested in society.

As announced in the 2005 Pre-Budget Report, the Government has been working with the industry to design a scheme which both preserves the rights of the individual consumer and at the same time allows these assets to be reinvested in the community. The Government welcomed the commitment from the industry and since then we have been working together to design a scheme.

This consultation document outlines our proposed scheme, including details of the banks' and building societies' proposed changes to the Banking Code and proposals for legislation.

A further Government consultation document will be released later in the Spring to consider the most effective means of distributing the available assets, taking as its basis the statement in the 2005 Pre-Budget Report that the funds should be reinvested in the community, with a focus on youth services that are responsive to the needs of young people, and also on financial inclusion and capability.

The 2005 Pre-Budget Report also announced that there will be an option for small locally-based financial institutions to focus on these needs in their local communities. These will typically be building societies, often playing an important role in these communities. It is proposed that small locally-based financial institutions will be defined by reference to a threshold level of total assets as in practice this indicates both relatively small and local institutions.

In line with previous announcements, it is proposed that banks and building societies will participate in the scheme on a voluntary basis, but the scheme will be backed by legislation to resolve issues concerning financial liability for the participating financial institutions and their customers.

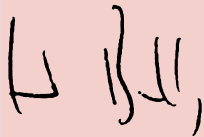
It is proposed that the unclaimed assets scheme will apply to bank and building society accounts where there has been no customer-initiated activity for at least 15 years. On this basis, the banks and building societies estimate that a stock of several hundred million pounds may currently lie unclaimed. They also estimate that a further flow of perhaps tens of millions of pounds may become available each year. These estimates are before the impact of a comprehensive reuniting exercise that banks and building societies will launch in advance of the scheme, building on their existing arrangements to help customers to track down their accounts.

It is proposed that unclaimed assets falling within the definition will be transferred to a central reclaim fund. However, for customers the process for reclaiming the money will not change – they need simply to visit their bank or building society, which will repay them as now. The reclaim fund will bear the financial risk for repaying customers who want to reclaim their assets after the introduction of the scheme. Centralising the risk in a single reclaim fund will allow it to be pooled and managed as efficiently as possible.

The reclaim fund will need to be managed prudently so that money is available to fund applications for reclaim. Banks and building societies will be responsible for calculating the amounts to be transferred and for handling the interaction with those customers, so customers will not need to have a direct relationship with the reclaim fund. It is proposed that the reclaim fund will be a freestanding body, independent of the Government, the banking industry and the distribution mechanism. It could either be an existing body or a new body. The banking industry's representative bodies will take the lead in selecting or setting up the body, which will then be wholly independent.

The reclaim fund will hand over for reinvestment in the community those assets not needed to cover anticipated reclaim requests. The need to manage assets for potential reclaim at a later date in order to protect customers' interests will, of course, mean that the reclaim fund will need to hold back a proportion of the assets it receives from the banks and building societies. As well as effective and prudential management of the fund, it is also proposed that customers' interests will be further safeguarded by access to the Financial Ombudsman Service for any disputes between themselves, the fund, and their bank or building society on these issues, and changes to the Banking Code will clarify how the banks and building societies will themselves interact with the scheme.

The Government welcomes comments on these proposals. We are committed together to making a scheme work successfully in the United Kingdom as has been done in other parts of the world.



Ed Balls MP
Economic Secretary to the Treasury



Angela Knight CBE
Chief Executive, British Bankers' Association



Adrian Coles
Director-General, Building Societies Association

INTRODUCTION

BACKGROUND AND CONTEXT

What are dormant accounts?

1.1 The term ‘dormant account’ is already used by banks and building societies. It applies to accounts where customers lose contact with their bank or building society for a sustained period. Banks and building societies wherever possible seek to retain contact with their customers. Where an account has become inactive for an extended period the account holding institution will write to the customer seeking to re-establish contact. If no response is received, the institution will cease sending out correspondence to the contact address and will class the account as ‘dormant’. This ensures that financial details are not sent to what might be an old address, seeking to protect the customer against fraud and identity theft.

1.2 The most typical reason for a bank or building society account becoming dormant is a customer omitting to advise of a change of address. In other situations the account holder may have died and their legal heirs may be unaware of the account. Poor financial capability, for example a lack of customer awareness of how to run an account, may sometimes be a factor. The Government set out its approach to tackling financial capability in January 2007.¹ It is therefore appropriate that some of the money released for distribution in this scheme should be used to help tackle financial capability and inclusion challenges.

1.3 It is proposed that legislation will define unclaimed assets as accounts where there has been no customer-initiated activity for at least 15 years. The proposed definition aims to capture genuinely unclaimed accounts rather than those that are rarely used by account holders.²

International experience of unclaimed assets schemes

1.4 A number of countries have introduced unclaimed assets schemes. These include Australia, Canada, Ireland, New Zealand, Spain and the United States. These schemes have a variety of different features, but typically are mandatory and require unclaimed assets in dormant accounts to be surrendered by the financial institution to the government, which then manages reclaim and decides how the money will be spent. Financial institutions which fail to comply with the schemes may in some cases be subject to criminal sanctions.

Principles for the UK unclaimed assets scheme

1.5 The key principles underlying the proposed UK scheme are:

- wherever possible, to re-unite account holders with the assets that are rightfully theirs;

¹ ‘Financial Capability: the Government’s long-term approach’, HM Treasury, January 2007.

² Chapter 4 details the proposed definition

- to provide a legal right for account holders to reclaim their money at any time;
- 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 in 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.

Questions:

- Are the principles underpinning the scheme the right ones?

REUNITING OWNERS WITH THEIR ASSETS

EXISTING REUNIFICATION SCHEMES

2.1 Individual banks and building societies have processes to reunite owners with their dormant accounts. Central tracing schemes are also run by the British Bankers' Association (BBA) and the Building Societies Association (BSA).

Banks and building societies individually

2.2 Institutions have set procedures for contacting customers in advance of making accounts dormant. This contact is normally in addition to other regular customer mailings. Depending on the circumstances, institutions may also undertake other forms of pro-active search to trace customers who have lost touch.

2.3 Given advances in information technology, institutions are increasingly less likely to lose track of customers and, with the development of multi-product relationships, customers are less likely to lose touch with institutions. This reduces the likelihood of accounts becoming dormant.

2.4 In the event that an account becomes dormant, customers can reclaim their money, or reactivate their account, by application to their bank or building society or by using the BBA and BSA tracing schemes. Once initiated, claims made via the BBA and BSA are treated in the same way as claims made direct to the institution.

BBA/BSA tracing schemes

2.5 Central tracing facilities for tracing dormant accounts and lost savings were introduced by the BBA and BSA in 2001. The service is free of charge and is covered by the Banking Code.³ These facilities are an extension of a more limited scheme introduced in 1998 and are designed principally to help customers who believe that they have an entitlement to an account, but are unsure of the specific account holding institution. This includes instances where the bank or building society may have closed or merged. The service may be used by people wishing to trace the accounts of others, but only if they are legally empowered to do so.

2.6 The key principle underpinning the schemes is that customers are given a clear understanding of their right to reclaim their money and simple instructions on how to proceed. Where only one institution is involved, customers are encouraged to engage directly with that institution. Where there is more than one institution involved, the BBA and BSA respectively coordinate the application.

2.7 Ten core 'pledges' underpin each of the schemes.

1. In advance of making an account dormant, following an extended period of inactivity, the bank or building society will write to the last known address seeking to re-establish contact, unless mail has already been returned from that address.
2. Where the customer responds, the account will be kept open.

³ 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.

3. If no response is received, the account will become dormant to protect against fraud and to protect privacy.
4. Records of all accounts made dormant will be maintained in perpetuity.
5. The funds from the dormant accounts remain in the beneficial ownership of the customer and continue to attract interest on the same basis as the preceding live account.
6. Claim forms will be made available through branch networks, central institutional points and through the BBA and BSA.
7. Claims made direct to individual institutions or via the BBA and BSA will be processed as quickly as possible and, in any event, within 3 months.
8. In the event of a valid claim the customer will be advised of: the balance of the account; the amount of interest that has accrued if the account is interest-bearing; and how the customer can access the funds.
9. Where claims are made via the BBA and BSA, the claim will be acknowledged and the customer will be informed if they have a valid claim.
10. There is a right of appeal through internal bank processes and, if necessary, by recourse to the Financial Ombudsman Service.

What do I do if I have a dormant account or lost savings?

If you are aware of which bank or building society holds your account, then you need only approach that institution. To help you with your search, the bank or building society will need your contact details and information about the account. It will help if you are aware of the names in which the account was held and the last address known by the institution. It will also help if you are aware of the account number and sort code. As you would expect, the bank or building society will also need proof of identity.

If you are unaware of the specific bank or building society holding the account, for instance because you recall closing all but one of a number of accounts held at different institutions some years ago, but cannot remember which institution held the remaining account, then you may find it helpful to conduct a search using the BBA or BSA central tracing facilities. These services are free and can be accessed by filling in a claim form. These can be obtained from the BBA and BSA and from bank and building society branches. The BBA and BSA contact details are as follows:

The Dormant Accounts Unit	Lost Accounts Scheme
British Bankers' Association	The Building Societies Association
Pinner's Hall	York House
105-108 Old Broad Street	23 Kingsway
London	London
EC2N 1EX	WC2B 6UJ
020 7216 8909	020 7437 0655
www.bba.org.uk	www.bsa.org.uk

Claim forms should be completed as fully as possible and returned to the BBA or BSA as appropriate. They can also be completed on-line. Should you require any assistance or advice feel free to contact the BBA or BSA via the contact telephone numbers given above.

If you are unaware of the specific bank or building society because the account holding institution has been taken over or has merged with another institution, you may be able to identify the institution holding the account by using information available on the BBA and BSA websites. If so, you can then approach the account holding institution directly.

Claims will be processed as quickly as possible, but can take up to three months. Banks and building societies are committed to helping you find dormant accounts and lost savings under the Banking Code. Should a bank or building society not be able to agree on the validity of your claim, you will have a right of appeal through its internal appeal process. If your appeal is unsuccessful and you are still not content you have the right to refer the matter to the Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London, E14 9SR. Telephone: 0845 080 1800; website www.financial-ombudsman.org.uk

Banks and building societies will continue to process claims in respect of account money transferred after 15 years under the unclaimed assets scheme, explained in Chapter 3.

THE PROPOSED PRE-LAUNCH REUNITING EXERCISE

2.8 The banks and building societies, and the Government, consider it appropriate that a further specific reunification exercise should take place in advance of the introduction of the unclaimed assets scheme. This will reactivate as many accounts as possible and reunite owners and their assets in advance of the transfer of money. It will also, therefore minimise reclaims following the introduction of an unclaimed assets scheme.

2.9 As part of this exercise, the banks and building societies have reviewed the BBA and BSA schemes. These were refined and refreshed during 2006 with the BBA and BSA modernising their claim forms, updating the related guidance and introducing an electronic facility enabling reclaims to be made by internet. Individual banks and building societies are also planning further proactive search activity in the run up to the unclaimed assets scheme, depending on activity already undertaken. This will include notifying customers of the change to the Banking Code, promoting the ability to reclaim money and may involve customer mailings and proactive searching.

2.10 The intention is that both the BBA and BSA schemes, and the banks' and building societies' own activities, will be actively promoted in the 12 months leading up to the introduction of the unclaimed assets scheme. This will include the issue of quarterly press releases over a twelve month period to national and regional newspapers, lifestyle and consumer magazines and websites. The aim will be to raise awareness of the unclaimed assets schemes and encourage pre-scheme reunification.

2.11 Throughout this exercise, the bank and building society sector will underline that account holders or their legal heirs will retain a legal right to reclaim their money, and that the money is capable of being reclaimed using the same procedures as before. This will be explained in the next version of the Banking Code, which is scheduled to be effective from March 2008. This will be well in advance of the introduction of the unclaimed asset scheme.

Questions:

- What other cost-effective steps could be taken to reunite customers with their assets?
- Is the proposed level of publicity the most cost-effective approach?

3

OPERATION OF THE SCHEME AND CONSUMER PROTECTION

3.1 This section explains how it is proposed that the scheme will operate and how consumers will be protected.

OVERVIEW OF THE SCHEME

3.2 As set out in Chapter 2, banks and building societies will be proactive in identifying the holders of dormant accounts. Where this is unsuccessful, and accounts have been dormant for at least 15 years, banks and building societies will be able to transfer equivalent assets to a central reclaim fund.

3.3 The central reclaim fund will have a legal obligation to repay the customer and the bank or building society's existing liability will be extinguished. Centralising the fund will enable reclaim risk to be pooled and managed as efficiently as possible. Banks and building societies will be responsible for calculating the amounts to be transferred, including accumulated interest.

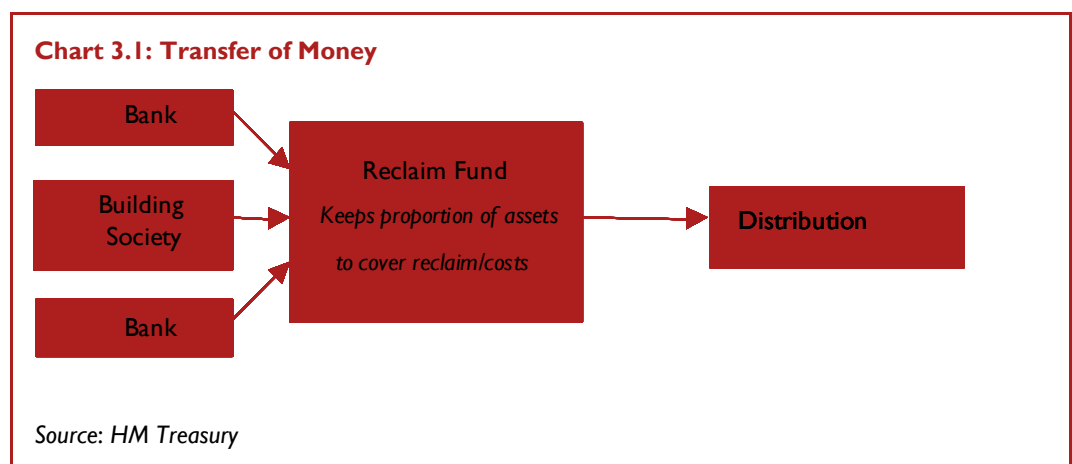
3.4 Customers will be entitled to reclaim money which has been transferred, on application to their original bank or building society, which will act as an agent of the central reclaim fund. Banks and building societies will be responsible for calculating the amounts to be repaid, including any interest due.

3.5 The central reclaim fund will be managed prudently so that adequate money is available to fund applications for reclaim. Money that the reclaim fund does not require to meet ongoing reclaims, or cover its own costs, will be handed over for reinvestment in the community. Once money is handed over for distribution, the reclaim fund will no longer have access to it. The Government will consult separately on proposals for a distribution mechanism later in the Spring.

Transfer of assets to the central reclaim fund

3.6 Following the reunification exercise, it is intended that banks and building societies will calculate the value of remaining dormant accounts where there has been no customer-initiated activity for 15 years or more. The institutions will then transfer amounts equivalent to the value of dormant accounts held by them to the central reclaim fund, including interest accumulated up to that point.

3.7 The diagram below illustrates the transfer of money under the scheme



3.8 Two of the conditions for treating liability to a customer as extinguished on transfer of the money will be that the central reclaim fund consents to the transfer, and that the bank or building society undertakes to hold all records relating to an account until the customer has been repaid. These conditions are expected to be reflected in practice in an agency agreement entered into between the reclaim fund and the bank or building society concerned. Key elements of the bank or building society's role as agent would be managing the customer relationship, maintaining customer records and managing the transfer and reclaim of money between customers and the reclaim fund. The precise terms of the agency agreement will be a matter for negotiation between institutions and the central reclaim fund.

3.9 As part of the agency arrangements, the banks and building society sector has committed to provide information needed by the reclaim fund to assist its assessment of the amount of money that will need to be retained in order to cover reclaims subsequent to transfer. This will include information about the institution's historical experience of reclaim of accounts which have been dormant for at least 15 years.

3.10 The calculation of the value of assets in dormant accounts and the transfer of those assets to the central reclaim fund will be made at least annually and be subject to independent audit; this will also be a condition of the agency agreement. The central reclaim fund will be legally liable for repaying the dormant account holder, including the liability to pay any interest accrued since the transfer to the fund.

The central reclaim fund: governance and management

3.11 It is proposed that the reclaim fund will be a freestanding body, independent of the Government, the banking industry and the distribution mechanism. It could either be an existing body or a new body. The banking industry's representative bodies will take the lead in selecting or setting up the body, which will then be wholly independent.

3.12 The reclaim fund will receive money transferred from the individual banks and building societies under the scheme. It will invest and manage this money prudently to meet reclaim applications. Only money not needed to meet the reclaim risk, or meet reasonable running costs, will be released for distribution. The central reclaim fund will have the option of outsourcing key tasks, for example the investment of funds transferred to it.

3.13. The Government is working with the Financial Services Authority (FSA) to ensure that the reclaim fund is able to apply for authorisation, subject to the fund meeting the relevant regulatory requirements. The FSA is an independent non-governmental body.⁴ FSA authorisation would bring the reclaim fund under the coverage of the Financial Services Compensation Scheme (FSCS). The FSCS is an independent body, set up under the Financial Services and Markets Act 2000 as the UK's compensation fund of last resort.

RECLAIM OF ASSETS

3.14 It is proposed that customers, or their legal heirs, will be entitled to reclaim money which has been transferred, on application to their original bank or building society. The bank or building society will act as the agent of the central reclaim fund in

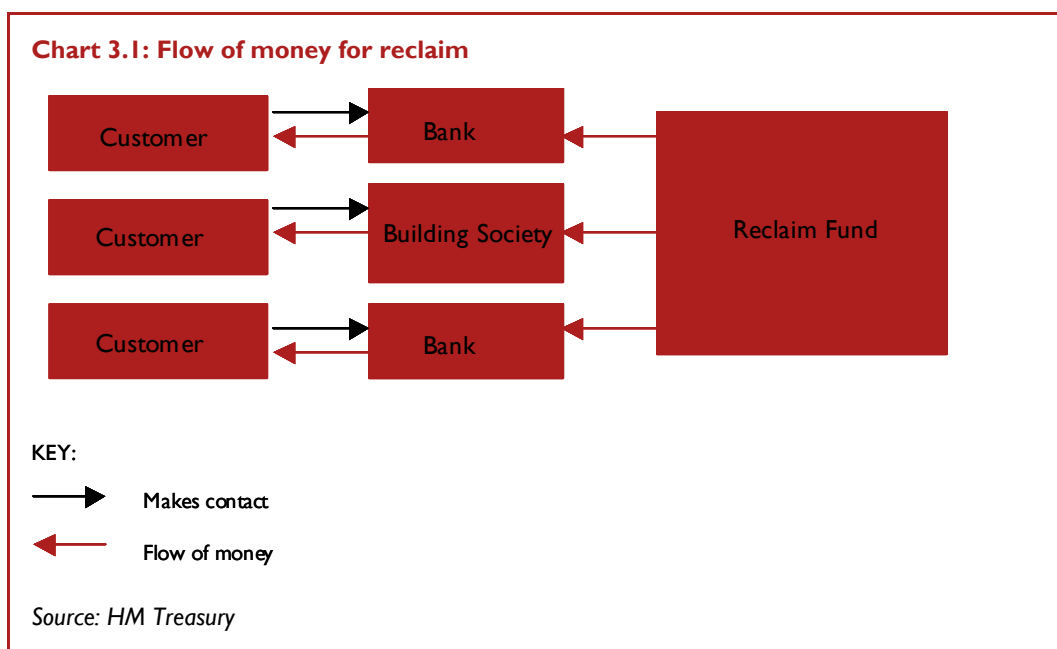
⁴ The FSA is given statutory powers by the Financial Services and Markets Act 2000 to achieve the objectives of maintaining market confidence, promoting public awareness of the financial system, securing the appropriate degree of consumer protection, and reducing financial crime.

dealing with applications for reclaim, under terms to be agreed when the bank or building society joins the scheme. Banks and building societies will continue to maintain customer records and will process reclaim applications on behalf of the central reclaim fund. This will include calculating any interest due.

3.15 For account holders, the process for reclaiming their money will not change. Upon presentation of the relevant documentation, and validation of the claim, the account holder will be repaid in full, including any interest due.

3.16 Banks and building societies will be reimbursed at least annually from the central reclaim fund for any amounts paid out, including for interest accrued since the account money was transferred to the reclaim fund. The total value of reimbursements will be subject to independent audit.

3.17 The diagram below illustrates customer contact and the flow of money for reclaim under the scheme.



How the customer will be treated

3.18 It is proposed that the Banking Code⁵ will set out how customers can expect to be treated. 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. Currently the Banking Code sets out:

If you have money in a dormant account, it will always be your property (or if you die, it will become part of your estate). This is the case no matter how many years pass.

⁵ Similar changes will also be made to the Business Banking Code. This sets standards of good banking practice in respect of business customers defined for the purpose of the Code as sole traders, partnerships, limited liability partnerships, and limited companies with a turnover of under £1 million, as well as associations, charities and clubs with an annual income of under £1 million.

If you ask us, we will tell you how to access these accounts either directly, or via the British Bankers' Association, the Building Societies Association or National Savings & Investment dormant account schemes.

3.19 An independent review of the Code is currently under way. Within the context of the review, the BBA and BSA have proposed that the Code should include a specific commitment in respect of the bank and building society sector, as agents of the central reclaim fund, regarding the reclaim of money transferred under the scheme. This will confirm that customers (or their estates) continue to have a legal right to repayment of their money by the fund.

3.20 The BBA and BSA have also proposed that the Code provisions relating to dormant accounts be expanded to reflect key aspects of the scheme and that the ten core pledges under which the bank and building society schemes operate are built into the Code guidance (see paragraph 2.7). It is envisaged that the revised Code will be applicable from March 2008, in advance of the introduction of the scheme and the first transfer of money.

3.21 Where customers are unsure of how to locate their bank or building society, for example following a merger or takeover, the customer should, as now, contact the BBA or BSA who will help them ascertain which bank or building society now holds their account.

Customer notification

3.22 The scheme has a potential to impact on any customer, whether they have an existing dormant account or not – any account potentially may become dormant some time in the future. Accounts which may be included in the scheme will be those where there is no customer-initiated activity for at least 15 years. As a minimum, there must have been no customer-initiated transaction in relation to an account in order for it to be transferred. However, institutions may choose, in addition, to treat other activity short of an actual transaction as indicating that a customer is not dormant. Practice may differ, for example because of differing systems capabilities. So not all individual customers who have not initiated any transactions on their account for 15 years will necessarily have their accounts transferred.

3.23 The bank and building society sector has agreed to notify customers generally of the introduction of the scheme and its implications for them. For holders of accounts that are not dormant and that are in active contact with their bank or building society, notification will be included as part of existing correspondence. For example, updates to terms and conditions, dormant account literature or changes to the Banking Code that are included in mailings currently.

Notifying customers with dormant accounts

3.24 In addition, there is a question about whether institutions should be required separately to notify individual customers with dormant accounts before their accounts are transferred into the scheme. Individual notification in principle gives greater certainty to customers. However, as explained in Chapter 2, banks and building societies generally write to customers whose accounts have been inactive for an extended period seeking to re-establish contact⁶. If there is no reply, the account will be treated as dormant and no further correspondence is sent. Banks and building societies

⁶ The point at which accounts are made operationally dormant or otherwise marked inactive varies based on institutional experience and the type of account in question.

consider that notification to the last known address after 15 years' inactivity would therefore be unlikely to be effective as a way of notifying the individual customer. It would also carry a risk in terms of fraud and identity theft and be administratively burdensome.

3.25 In practice, all customers have the right to repayment of money so transfer to the scheme should make little practical difference to individuals. It is therefore proposed that instead of writing to customers with dormant accounts, the bank and building society sector will publish their policies for identifying which accounts are dormant, enabling individuals to understand the basis on which their money is likely to be transferred to the scheme in the future or not. They intend to do this by publishing these policies in institutions' literature on dormant accounts and on their websites. Customers contacting their branch would be provided with this information. This level of publicity is proposed to be a requirement of the Banking Code.

3.26 More generally, it is likely that the majority of holders of unclaimed assets will also be customers of other banks and thus will be notified of the general impact of the scheme on account holders during the course of their normal ongoing banking relationship. The reuniting campaign prior to the scheme launch will seek to reunite account holders with their money and also raise wider public awareness of the scheme⁷.

Dealing with disputes

3.27 Currently, if there is a dispute between account holders and their bank or building society that cannot be settled through the institution's own complaints procedure, customers have recourse to the Financial Ombudsman Service (FOS) to resolve the issue. Customers may also ultimately have the right to settle disputes through the courts. Under the proposed scheme, account holders will continue to have these rights.

3.28 It is proposed that provision will be made to ensure that account holders under this scheme will have recourse to the FOS for the resolution of disputes with their bank or building society or with the central reclaim fund. Customers will also have the ability to enforce their legal right to repayment against the central reclaim fund via the courts if ever needed.

3.29 Banks and building societies will continue to maintain customer records. But in circumstances where it is not possible for claims for repayment to be resolved by the original bank or building society, it may be necessary for the central reclaim fund to become involved directly, and have access to information held by the bank or building society about an account. It is anticipated that the disclosure of this information will be a condition of agency agreements between financial institutions and the reclaim fund. Additionally, provision will be needed in legislation to enable confidential information to be transferred from the bank to the reclaim fund in such circumstances where appropriate.

Managing assets for reclaim

3.30 It is proposed that the central reclaim fund's principal responsibility will be managing its reclaim risk so that money is available to meet future reclaim applications. Only money not required for reclaim, or to meet running costs, will be released for distribution.

⁷ See Chapter 2.

3.31 It is intended that the central reclaim fund will take a prudent approach to appraising its risk. In doing this it will be able to draw on international experience of reclaim rates, the experience of the banking industry on the reclaim of dormant accounts in the UK and, as it goes forward, its own experience. The reclaim fund will also have the option to place a moratorium on money being handed over for distribution or to seek insurance.

3.32 The level of reclaim is expected to be low given the conservative definition of an unclaimed asset of no customer-initiated activity for at least 15 years. Additionally, the comprehensive reuniting exercise before launch⁸ should reduce the level of ongoing reclaim. Pooling institutions' individual reclaim risks into a central fund should also increase predictability. The fund should therefore have sufficient flexibility to manage reclaim risk.

⁸ See Chapter 2.

Protecting the consumer

This box sets out the key measures proposed to protect consumers under the proposed scheme in line with the principles in Chapter 1. These include:

- pro-active attempts by banks and building societies to reunite account holders with their money before launch
- the account holder's ongoing legal right to repayment by the central reclaim fund after the scheme is launched
- updated provisions in the Banking Code setting out how customers should be treated, including:
 - customers continuing to use their own bank or building society as the means to reclaim their money;
 - equivalent treatment for all customers whether or not their money has been transferred into the scheme; and
 - banks and building societies informing their customers about the scheme, including publishing their policies for treating accounts as unclaimed assets
- the right of access to the Financial Ombudsman Service for the resolution of disputes
- liability for reclaim transferred to a fund that will:
 - manage assets prudently;
 - pool reclaim risk across the sector; and
 - have the option to place a moratorium on money being handed over for distribution or to seek insurance.
- In addition, as explained in paragraph 3.13, the Government is working with the FSA to ensure that the reclaim fund is able to apply for authorisation, subject to the fund meeting the relevant regulatory requirements. The FSA is an independent non-governmental body⁹. FSA authorisation would bring the reclaim fund under the coverage of the FSCS. The FSCS is an independent body, set up under the Financial Services and Markets Act 2000 as the UK's compensation fund of last resort.

Small locally-based financial institutions

3.33 In line with the underlying principle that the scheme should be as light touch as possible, the 2005 Pre-Budget Report announced that there would be an option for small locally-based financial institutions to focus the use of unclaimed assets on youth services, financial capability and inclusion in their local communities. The intention is to allow small institutions, principally small building societies, to use unclaimed assets to benefit the communities to which their members belong.

⁹ 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 consumer protection, and reducing financial crime.

3.34 It is proposed that small locally-based financial institutions will therefore have the option of participating in the scheme in a different way. They will be able to treat their liabilities to their customers as extinguished on the condition that they make appropriate provision for managing reclaim risk, possibly by transferring an agreed proportion of their unclaimed assets to the central reclaim fund, or managing the risk on their own balance sheets, and distribute the remainder to local charitable organisations.

Questions

- Do you agree that customers continuing to deal with their banks directly, and banks continuing to manage account information, is the simplest and most effective approach?
- Paragraphs 3.22 – 3.26 set out how customers will be notified of the changes involved under the scheme. Do you agree that this is the best means to notify customers?
- The scheme aims to protect the consumer – are the proposed protections appropriate and sufficient?
- Do you have any other comments on the suggested operating structure, taking into account the principles set out in paragraph 1.5?

4

LEGISLATION

4.1 Having considered the scope for non-legislative approaches the Government has concluded that legislation will be required to enable an unclaimed assets scheme to be established. The proposed legislation is primarily concerned with protecting the rights of account holders and safeguarding the position of the participating financial institutions.

4.2 The proposed legislation will include provisions in respect of the following:

- definition of accounts to be included in the scheme;
- definition of banks and building societies participating in the scheme;
- extinguishment of the participating institutions' liability to repay the customer on the transfer of money to a reclaim fund and its replacement with a new liability on the reclaim fund to repay;
- set up and operation of a reclaim fund;
- other consumer protections; and
- arrangements for small locally-based financial institutions.

4.3 This section outlines the proposed legislation and its interaction with existing legislation relating to some types of dormant accounts.

DEFINITION OF DORMANT ACCOUNTS INCLUDED IN THE SCHEME

4.4 It is proposed to define dormant accounts included in the scheme as those current and deposit accounts where there has been no customer-initiated activity for at least 15 years.

4.5 The proposed scheme aims to capture genuinely unclaimed accounts rather than those that are rarely used by their account holders. It would be inappropriate to transfer funds that are not truly dormant and also make reclaim harder to manage. On the basis of UK and international experience, 15 years seems to best identify these accounts. The 2005 Pre-Budget Report therefore set out a Government and banking industry agreed definition that unclaimed assets should generally cover accounts where there has been no customer activity for a period of 15 years. It is proposed that the exception to this is 'no mail accounts'. These are accounts where account holders have asked their bank or building society not to contact them.¹⁰ As financial institutions cannot contact these customers, it can be difficult to establish whether their accounts are truly dormant. Such accounts will be excluded from the scheme. In the case of fixed term accounts or accounts with maturity dates, the 15 year time period begins at the end of the fixed term.

4.6 It is intended that the period of 15 years will depend on no customer-initiated activity being undertaken. The activity on the account has to be specifically customer

¹⁰ This does not refer to accounts where the account holder has simply asked not to receive marketing materials from their bank or building society.

initiated to exclude transactions financial institutions may make, such as adding interest at periodic intervals, without any interaction from the account holder.

4.7 Customer-initiated activity is a clear sign that account holders are aware of their accounts, and on this basis, banks and building societies will decide which accounts to include in the scheme. It is proposed that the legislation will define such activity as transactions made by account holders on their accounts. Financial institutions may choose in addition to have regard to other forms of customer activity as indicators of whether an account is truly dormant. This could include correspondence, telephone calls, emails, voting at a building society's annual general meeting and customer-initiated activity on other accounts, solely or jointly in the account holder's name.

4.8 Generally all accounts meeting the 15 year definition will be eligible for inclusion in the proposed unclaimed assets scheme. The Banking Code will require institutions to publish their policies on how they intend to participate in the scheme.

DEFINITION OF BANKS AND BUILDINGS SOCIETIES PARTICIPATING IN THE SCHEME

4.9 It is proposed that financial institutions able to participate in the scheme will be those authorised by the FSA to accept deposits in the UK and those with EEA passport rights, which have permission to accept deposits in the UK. There will be a specific exemption for credit unions.¹¹

4.10 A small number of banks and building societies covered by this definition are not subscribers to the Banking Code. It is proposed that these institutions will be able to participate in the scheme, but they will be expected to do so on terms equivalent to those in the Banking Code (for example, that they agree to deal with reclaim applications on behalf of the central reclaim fund). It is expected that this requirement will be included by the central reclaim fund in the agency agreement entered into with the relevant financial institution as a matter of course, and so it is not proposed to make this a requirement in legislation.¹²

LIABILITY TO REPAY CUSTOMERS

4.11 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 extinguished¹³. 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

¹¹ The definition is likely to follow the example of the definition of "relevant institution" in s28(8) of the Charities Act 1993. This provision includes a person who has permission under Part 4 of the Financial Services and Markets 2000 to accept deposits and an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which 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.

¹² See Chapter 3 for more detail the agency agreements.

¹³ IAS 39 paragraph 39.

- be released from the obligation by process of law.¹⁴

4.12 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 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.¹⁵

4.13 It is therefore proposed 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.

4.14 The proposed conditions include:

- the bank or building society undertakes to hold all records on behalf of the reclaim fund relating to the account, until the customer has been repaid;
- the bank and building society must transfer a sum equivalent to the amount owing to the dormant account customer to the reclaim fund which itself must meet certain conditions; and
- the reclaim fund must consent to the transfer of the unclaimed assets.

RECLAIM FUND

4.15 It is proposed that the legislation will set out conditions with which a reclaim fund must comply in order for a bank or building society to be entitled to extinguish its liability to customers on the transfer of assets to such a body. It is proposed that the reclaim fund will be a freestanding body, independent of the Government, the banking industry and from the distribution mechanism. It could either be an existing body or a new body. The banking industry's representative bodies will take the lead in selecting or setting up the body, which will then be wholly independent.

4.16 In addition, the legislation will impose a specific statutory obligation on a reclaim fund to repay a customer whose assets have been transferred, which will be enforceable by the customer in court.

OTHER CONSUMER PROTECTIONS

Financial Services Authority and Financial Services Compensation Scheme

4.17 The Government is working with the FSA to ensure that the reclaim fund is able to apply for authorisation, subject to the fund meeting the relevant regulatory requirements. The FSA is an independent non-governmental body.¹⁶ FSA authorisation would bring the reclaim fund under the coverage of the FSCS. The FSCS is an

¹⁴ This is set out in detail in IAS 39 guidance paragraphs AG57 to AG63.

¹⁵ The impact of the Prescription and Limitation (Scotland) Act 1973 provides a possible exception to this in relation to accounts governed by Scots law, which will be taken into account in developing the details of the scheme.

¹⁶ 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 consumer protection, and reducing financial crime.

independent body, set up under the Financial Services and Markets Act 2000 as the UK's compensation fund of last resort.

Financial Ombudsman Service

4.18 It is proposed that provision will be made to ensure that disputes relating to applications for reclaim can be determined by the FOS, where appropriate.

Customer records

4.19 A bank or building society is normally subject to a duty not to disclose to any other person information which it has obtained in the course of its relationship with a customer, without the customer's consent. This is subject to certain qualifications, for example where there is a statutory obligation to disclose information in the context of criminal investigations, or where it is in the bank's interests to do so, for example where the bank is being sued. There is also existing provision¹⁷ for parties to legal proceedings to apply to court for an order for inspection of a bank's records. However, the reclaim fund may need to have access to information about an account before formal proceedings are commenced. It is envisaged that an undertaking to retain records will be one of the conditions required by legislation for liabilities to be extinguished on transfer to the reclaim fund (see paragraph 4.14) and this would be reflected in the agency agreement between the reclaim fund and an individual institution. Additionally, it is proposed that the legislation will provide that a bank or building society should not be precluded by any confidentiality obligation or restriction on disclosure from disclosing information to a reclaim fund. But any such disclosure would be confined to the purposes of establishing whether the fund is obliged to repay a customer and discharging that obligation. This is only expected to be relevant in exceptional cases where customers are not able to seek repayment via their bank or building society.¹⁸

Membership rights

4.20 Additionally, the proposed scheme is not intended to affect an account holder's building society membership rights.

SCHEME FOR SMALL LOCALLY-BASED FINANCIAL INSTITUTIONS

4.21 It is proposed that the legislation will define which institutions will be able to take up the option for small locally-based financial institutions. It is proposed to define these institutions by reference to total assets, or, in the case of an institution belonging to a group, by reference to the total assets of the group to which the institution belongs. This is intended to provide a basis for definition that is transparent and easy to use.

4.22 The level of total assets could be up to £7bn. The table below sets out preliminary estimates of the numbers of institutions that might be able to use the option and an indication of the amount of unclaimed assets that could be held by an

¹⁷ Bankers Books Evidence Act 1879

¹⁸ In addition, the BBA and BSA propose that banks' treatment of customers, including their commitment to assisting owners reclaim their money, will be incorporated in the Banking Code, which is monitored by the Banking Code Standards Board.

institution just below an asset level.¹⁹ Before the proposed legislation is drafted the final asset level may need to be reviewed to ensure it captures the right institutions

Table 4.1

Total assets (£bn)	Preliminary estimates of building societies and banks affected	Illustrative estimate for an institution just under the threshold (£'000)
7	59	900
5	57	840

4.23 Of the building societies with less than £7bn total assets, over 90 per cent have all their branches within 70 miles of their head office.²⁰ Affected banks may not have particularly local operations, but a definition based on total assets would mean the vast majority of affected institutions could demonstrate a degree of geographical concentration.

4.24 Over time the asset level defining small locally-based institutions may need to be revised. It is proposed that legislation provides the Secretary of State with an order making power to amend it.

4.25 Legislation will also provide for the operation of this small locally-based option. One option would be for small locally-based institutions to transfer an agreed proportion of their unclaimed assets to the central reclaim fund to cover reclaim. In this case legislation could allow institutions meeting the definition to extinguish their liability to a dormant account holder so that the liability can be de-recognised for accounting purposes if the following conditions are met:

- the bank or building society undertakes to hold all records on behalf of the reclaim fund relating to the account, until the customer has been repaid;
- the reclaim fund must itself meet certain conditions;
- the bank or building society must transfer an agreed amount to the reclaim fund to cover applications for reclaim and the reclaim fund must consent to the transfer of the assets; and
- the bank or building society must transfer an amount equivalent to the balance of the debt owing to the dormant account holder (less the amount transferred to the reclaim fund) to an arm's length charitable organisation for distribution in accordance with the spending priorities of the scheme.

4.26 Alternatively, small locally-based institutions might manage the reclaim risk on their own balance sheets. In this case legislation could enable institutions to extinguish their existing contractual liabilities to customers on condition that they pass an equivalent amount of unclaimed assets over to an arm's length charitable body, that could distribute assets to smaller charities, less a reasonable amount to cover expected requests for reclaim.

¹⁹ These initial estimates include seven banks subscribing to the Banking Code. Details of unclaimed assets held by individual institutions are not available. Illustrative estimates are based on pro-rata allocations of total estimated unclaimed assets. Actual amounts could differ significantly.

²⁰ Advised by the BSA.

EXISTING LEGISLATION RELATING TO DORMANT ACCOUNTS

4.27 It is expected that existing procedures affecting some types of dormant accounts will operate concurrently with the proposed scheme. Legislation will not need to exclude them. The affected accounts are:

- dormant charity accounts;
- accounts where the owner is in insolvency proceedings; and
- accounts that can be claimed as bona vacantia by the Crown.

4.28 There is separate legislation on these matters in Scotland and Northern Ireland.

Dormant charity accounts

4.29 These are already defined in law as bank or building society accounts belonging to charities that have had no customer-initiated transactions for a period of five years or more.

4.30 In England and Wales, the Charity Commission has powers to direct funds held in dormant charity accounts to be transferred to another charity²¹. This is part of its role in ensuring that charitable funds are used for charitable purposes²². Similar powers exist for the Office of the Scottish Charity Regulator and for the proposed Charity Commission for Northern Ireland.²³

4.31 With the introduction of an unclaimed assets scheme, dormant charity accounts may be transferred to the central reclaim fund where they meet the 15 year definition. The power of charity regulators to direct funds will not apply to funds transferred to an unclaimed assets scheme. However, where financial institutions are aware of these accounts, it is expected that they will notify the relevant charity regulators and not include these unclaimed assets in the proposed scheme.

²¹ This is under section 28 of the Charities Act 1993. Section 28 empowers relevant institutions (e.g. banks, building societies, deposit takers, etc) and the Charity Commission as follows:

- to enable banks, building societies, deposit-takers, etc to voluntarily inform the Commission of dormant charity bank accounts without fear of complaints of breaching client confidentiality; and
- to enable the Commission, after making reasonable enquiries to locate any of the charity trustees, to find other outlets for applying the money for charitable purposes. The Commission must have regard to the original purposes of the dormant charity (if known) when selecting a new recipient.

For the purposes of section 28, an account is dormant if no transaction, other than payment into the account or a transaction effected by the institution holding the account, has occurred in the five years immediately preceding the date when the institution informs the Commission of the account.

²² If the Commission directs funds from a dormant charity account to another charitable purpose the original charity or its trustees do not have a right to claim the funds back

²³ In Scotland these powers are under Sections 47 and 48 of the Charities and Trustee Investment (Scotland) Act 2005. Similar powers for Northern Ireland are proposed in the Draft Charities (Northern Ireland) Order 2007.

Accounts where the owner is in insolvency proceedings

4.32 Existing legislation regulates how assets belonging to companies or individuals subject to insolvency proceedings are dealt with.²⁴ Under the proposed scheme, these assets might be held in dormant bank and building society accounts, or might have been transferred to the reclaim fund before the account holder became subject to insolvency proceedings.

4.33 In insolvency proceedings an insolvency office holder is appointed and is responsible for dealing with the available assets. Depending on the procedure, the assets may automatically vest in the office holder (e.g. bankruptcy) or the office holder may have statutory powers to control the assets to which a company is or appears to be entitled, including those held in dormant bank accounts. A person or company subject to insolvency proceedings is required to disclose the existence of such assets to the office holder.

4.34 It is intended that the introduction of an unclaimed assets scheme will not affect the rights of insolvency office holders, or account holders, to the relevant funds. If these funds have been transferred to the scheme, it should be possible for the appropriate person to reclaim them.

4.35 Where participating banks and building societies are aware of insolvency proceedings having been initiated in relation to a dormant account holder, it is expected that the relevant assets will be excluded from the proposed scheme.

Accounts that can be claimed as bona vacantia by the Crown

4.36 Bona vacantia is the legal name for ownerless property, which by law passes to the Crown. Bona vacantia includes assets that belonged to dissolved companies and to people who have died intestate, with no known kin. Across the UK, the Crown claims bona vacantia through different bodies.²⁵ These bodies expect financial institutions to identify relevant accounts and to inform them of their existence. Where the accounts belong to deceased individuals the relevant bodies try to identify their next of kin.

4.37 The introduction of an unclaimed assets scheme would not alter the Crown's right to claim bona vacantia. If bona vacantia were transferred to the scheme reclaim fund, the Crown would have the right to recover these funds as soon as it became aware of them.

4.38 It is expected that financial institutions will not transfer accounts that are bona vacantia to the scheme, and instead, will notify the relevant Crown body. It is also expected that where institutions know of accounts that become bona vacantia after relevant assets have been transferred to the scheme that they will notify the appropriate Crown body.

²⁴ Across the UK insolvency is administered by: the Insolvency Service, the Accountant in Bankruptcy (Scotland) and the Insolvency Service for Northern Ireland.

²⁵ England and Wales (excluding the Duchies of Cornwall and Lancaster) – The Treasury Solicitor's Department; Scotland – The Queen's and Lord Treasurer's Remembrancer; Northern Ireland – The Crown Solicitor (as the Treasury Solicitor's nominee); and in the Duchies of Cornwall and Lancaster – Farrer & Co Solicitors.

Questions

- Does a minimum requirement of no customer-initiated transactions best identify unclaimed assets?
- Does the definition of banks and building societies adequately cover the institutions participating in the scheme? Do you agree that banks and building societies that do not subscribe to the Banking Code should be permitted to participate in the scheme?
- Do you agree that banks and building societies should be permitted to disclose confidential information about an account to the reclaim fund for the purposes of establishing whether the fund is obliged to repay a customer and discharging that obligation?
- What level of assets best captures small locally-based institutions?
- Will the proposals for the operation of the small locally-based scheme enable these institutions to meet the agreed spending priorities in the local communities effectively?
- Do you agree that the proposals will allow existing procedures for some types of dormant accounts to operate concurrently with an unclaimed assets scheme

5

LIST OF QUESTIONS FOR THE PARTIAL REGULATORY IMPACT ASSESSMENT

5.1 A partial regulatory impact assessment is attached and we welcome views on the assumptions made. It would be helpful to receive comments on both the costs and benefits of the proposed scheme to account holders, financial institutions and others.

Questions:

- What are your views on the assumptions?
- What are the set up, compliance and overall costs of these proposals? In particular:
 - costs for financial institutions to identify and notify account holders;
 - costs for financial institutions to manage reclaim and reunification, acting as agents of the reclaim fund; and
 - costs for financial institutions of the audit of the transfer of money to and from the reclaim fund.

6

HOW TO RESPOND TO THIS CONSULTATION

6.1 The Government welcomes all responses to the questions outlined in this paper. The consultation will run for 12 weeks from publication until 12 June 2007. Please ensure that responses to this document reach us by the closing date. We cannot guarantee to consider your response if it arrives after that date.

Responses should be sent to:

Unclaimed Assets Consultation
Payments & Inclusion Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Email: unclaimedassets@hm-treasury.gov.uk

Fax: 020 7270 4694

Telephone queries should be directed to:

Charlie Lewis - 020 7270 4779

Helen Creeke - 020 7270 5268

6.2 This paper is available on the Treasury's public website at: http://www.hm-treasury.gov.uk/consultations_and_legislation/unclaimed_assets/consult_unclaimedassets_index.cfm. For hard copies, please use the contact details above.

6.3 When responding, please state whether you are responding on behalf of an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

CONFIDENTIALITY

6.4 All written responses will be made public on HM Treasury's website unless the author specifically requests otherwise in writing.

6.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

6.6 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing

responses unless an explicit request for confidentiality is made in the body of the response.

6.7 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

6.8 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and another confidential version for use by HM Treasury.

6.9 A summary of responses will be published at http://www.hm-treasury.gov.uk/consultations_and_legislation/unclaimed_assets/consult_unclaimedassets_index.cfm.

Any Freedom of Information Act queries should be directed to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Telephone: 020 7270 4558

Fax: 020 7270 4681

Email: public.enquiries@hm-treasury.gov.uk

Code of practice for written consultation

6.10 This consultation document is being conducted in line with the Code of Practice for written consultation (a full version can be found at www.cabinet-office.gov.uk/regulation/code.htm) which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;
- Be clear about what the proposals are, who may be affected, what questions are being asked, and the timescale for responses;
- Ensure the consultation is clear, concise and widely accessible;
- Give feedback regarding the responses received and how the consultation process influenced the policy;
- Monitor the department's effectiveness at consultation, including through the use of a designated consultation coordinator; and
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

6.11 If you feel that this consultation does not fulfil these criteria, please contact:

Sowdamini Kadambari
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Telephone: 020 7270 4867

Email: Sowdamini.Kadambari@hm-treasury.gov.uk

LIST OF QUESTIONS FOR CONSULTATION

- Are the principles underpinning the scheme the right ones?
- What other cost-effective steps could be taken to reunite customers with their assets?
- Is the proposed level of publicity the most cost-effective approach?
- Do you agree that customers continuing to deal with their banks directly, and banks continuing to manage account information, is the simplest and most effective approach?
- Paragraphs 3.22 – 3.26 set out how customers will be notified of the changes involved under the scheme. Do you agree that this is the best means to notify customers?
- The scheme aims to protect the consumer – are the proposed protections appropriate and sufficient?
- Do you have any other comments on the suggested operating structure, taking into account the principles set out in paragraph 1.5?
- Does a minimum requirement of no customer-initiated transactions best identify unclaimed assets?
- Does the definition of banks and building societies adequately cover the institutions participating in the scheme? Do you agree that banks and building societies that do not subscribe to the Banking Code should be permitted to participate in the scheme?
- Do you agree that banks and building societies should be permitted to disclose confidential information about an account to the reclaim fund for the purposes of establishing whether the fund is obliged to repay a customer and discharging that obligation?
- What level of assets best captures small locally-based institutions?
- Will the proposals for the operation of the small locally-based scheme enable these institutions to meet the agreed spending priorities in the local communities effectively?
- Do you agree that the proposals will allow existing procedures for some types of dormant accounts to operate concurrently with an unclaimed assets scheme?
- What are your views on the assumptions in the partial regulatory impact asset?
- What are the set up, compliance and overall costs of these proposals? In particular:
 - costs for financial institutions to identify and notify account holders;
 - costs for financial institutions to manage reclaim and reunification, acting as agents of the reclaim fund; and
 - costs for financial institutions of the audit of the transfer of money to and from the reclaim fund.

B

PARTIAL REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL

B.1 This is the partial regulatory impact assessment (RIA) of the legislative proposal to facilitate the establishment of an unclaimed asset scheme. The proposal is being consulted on and this partial RIA discusses the implications.

PURPOSE AND INTENDED EFFECT

Objective

B.2 The proposed legislation will facilitate the establishment of an unclaimed assets scheme in the UK, covering dormant accounts held by banks and building societies. Unclaimed assets transferred to the scheme will be used to fund ongoing reclaim from account holders with the balance being available for reinvestment in the community.

B.3 In bringing forward legislation, the Government's objectives 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 at any time;
- 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.

B.4 The proposed legislation will apply across the UK.

Background

B.5 This partial RIA relates to proposals to facilitate the establishment of a scheme to allow money in dormant bank and building society accounts to be reinvested in the community without taking away consumers' rights to reclaim their money.

B.6 The scheme will apply to bank and building society accounts where there has been no customer-initiated activity for at least 15 years. On this basis, the banks and building societies estimate that a stock of several hundred million pounds may currently lie unclaimed. Going forward there will be estimated further flows of unclaimed assets amounting to perhaps tens of millions of pounds annually.

B.7 A number of countries have unclaimed assets schemes. Typically these require unclaimed assets in dormant accounts to be surrendered to the government. Under these schemes account holders retain the right to reclaim their assets and there are procedures in place so that they can do so. Banks and building societies have agreed to work with the Government to set up an unclaimed assets scheme in the UK. The 2006 Pre-Budget Report announced the Government's intention to legislate and consult on this issue.

B.8 Work is continuing to determine the most effective and efficient means of distributing the available surplus assets in a coordinated way that delivers the best outcomes. The Government will produce a separate consultation document setting out proposals for a distribution mechanism in the Spring of 2007.

RATIONALE FOR GOVERNMENT INTERVENTION

B.9 It is not possible to introduce an unclaimed assets scheme and protect the rights and interests of account holders and financial institutions without legislation.

B.10 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.²⁶ 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.²⁷

B.11 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 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.²⁸

B.12 It is therefore proposed 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.²⁹

B.13 The proposed conditions include:

- the bank or building society undertakes to hold all records on behalf of the reclaim fund relating to the account, until the customer has been repaid;

²⁶ IAS 39 paragraph 39.

²⁷ This is set out in detail in IAS 39 guidance paragraphs AG57 to AG63.

²⁸ 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.

²⁹ The proposed scheme will not affect account holders' building society membership rights.

- the bank or building society must transfer a sum equivalent to the amount owing to the dormant account customer to a central reclaim fund which itself must meet certain conditions; and
- the reclaim fund must consent to the transfer of the unclaimed assets.

B.14 In bringing forward legislation, the Government will provide the legal right for account holders whose assets are transferred to reclaim their money at any time.

CONSULTATION

B.15 This partial RIA concerns the plans for enabling legislation and considers the costs and benefits for each of the implementation options.

B.16 To assess the impact of the proposals HM Treasury has consulted with a wide range of central Government departments interested in an unclaimed assets scheme. In addition discussions have been held with the devolved administrations:

- Scotland: Scottish Executive, the Office of the Scottish Charity Regulator and the Accountant in Bankruptcy;
- Northern Ireland: Department for Finance and Personnel, the Department for Social Development and the Northern Ireland Insolvency Service; and
- Wales: National Assembly for Wales.

B.17 HM Treasury is seeking comments on the analysis in this partial RIA, including costs and benefits, with any supporting evidence. If you believe other costs and benefits or alternative options should be considered, please suggest them. The feedback to the partial RIA will provide valuable information that will be considered for the final RIA following this consultation.

B.18 The consultation document for the proposed scheme is published in conjunction with this partial RIA and the two should be read together.

OPTIONS

B.19 The implementation options for an unclaimed assets scheme are:

- Option 1 - do nothing
- Option 2 – the proposed scheme
- Option 3 – a compulsory scheme

Option 1 - do nothing

B.20 Without legislation the current situation will continue as banks and building societies would not be able to extinguish their liability to dormant account holders upon transfer of unclaimed assets for reinvestment in the community. The pre-scheme reunification exercise and customer notification procedures will add to existing efforts undertaken to make customers aware of their dormant accounts.

Option 2 – the proposed scheme

B.21 The proposed legislation will facilitate the establishment of an unclaimed assets scheme to benefit the wider community. Where possible the scheme will draw on

existing systems and infrastructures to maximise the amount of assets for redistribution.

B.22 The British Bankers' Association (BBA) and the Building Societies Association (BSA) support the scheme as indicated in the foreword to the consultation document. They have confirmed that aspects of the scheme, those that regulate how financial institutions treat their customers, will be self-regulated through the Banking Code.³⁰ Consumers will also benefit from other protections.

B.23 Before the introduction of the scheme, banks and building societies will run a comprehensive reunification exercise to reunite customers with their dormant accounts. The BBA and BSA already have free tracing schemes 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.

B.24 Where reunification is unsuccessful and the dormant accounts meet a statutory definition of an unclaimed asset, banks and building societies may transfer equivalent assets to a reclaim fund. An unclaimed asset will be defined as an account on which there has been no customer-initiated transactions for a period of at least 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 and emails in deciding whether an account should be transferred.

B.25 Where assets are transferred, the reclaim fund will have the legal obligation to repay account holders. Participating institutions' existing liabilities on these transferred assets will be extinguished. A central fund will enable the reclaim risk to be pooled and managed as efficiently as possible. 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 the reclaim fund. Banks and building societies will be responsible for calculating the amounts to be repaid, including any interest due. As the fund will not manage customer enquiries this will reduce its running costs and avoid the need for personal account data to be transferred to it.³¹

B.26 The central reclaim fund will be managed prudently so that money is available to fund applications for reclaim. Money that the reclaim fund does not require to meet reclaim, or cover its own costs, will be passed on for reinvestment in the community. At this point the reclaim fund will no longer have access to it.

B.27 The main risks of this model are:

- financial institutions might not take advantage of the enabling legislation so less money is released to the community. This has been mitigated as the bank and building society sector are committed to taking part in the scheme as it is currently proposed; and
- the central reclaim fund may not be able to cover reclaim. The fund will be managed prudently and will be able to take action to limit this risk. The

³⁰ The Banking Code is sponsored by the BBA, BSA 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 United Kingdom.

³¹ In exceptional cases, such as in the event of disputes involving the reclaim fund it may be necessary for the fund to have access to information held by a bank or building society about an account that is relevant to the reclaim fund's liability. Provision will be needed to ensure that, subject to appropriate conditions, necessary information can be lawfully disclosed.

Government is also working with the Financial Services Authority (FSA) to ensure that the reclaim fund is able to apply for authorisation, subject to the reclaim fund meeting the relevant regulatory requirements. The FSA is an independent non-governmental body.³² FSA authorisation would bring the fund under the coverage of the Financial Services Compensation Scheme (FSCS). The FSCS is an independent body, set up under the Financial Services and Markets Act 2000 as the UK's compensation fund of last resort.

Option 3 – a compulsory scheme

B.28 Compulsory unclaimed assets schemes exist in other countries, for example in, Australia, Canada, Ireland, New Zealand, Spain and the United States. 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.

B.29 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.

B.30 The principal drawbacks of a compulsory scheme are:

- that the costs for complying with and enforcing statutory requirements would be higher than the proposed scheme, reducing the amount of assets available for distribution to the community; and
- it could take longer to set up than the scheme proposed. Institutions would need time to adapt their systems and time would be needed to set up a monitoring and enforcement framework. This could affect when money would be available for distribution.

³² 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 consumer protection, and reducing financial crime.

COSTS AND BENEFITS

Sectors and groups affected

B.31 The main groups affected by the proposed scheme and its implementation are account holders, financial institutions with permission to accept deposits under Part IV of the Financial Services and Market Act (or those with EEA passport rights), and the communities that might benefit from reinvestment of assets. The costs and benefits of each option are assessed in relation to these groups.

BENEFITS

Option one – do nothing:

B.32 Doing nothing would not alter the current situation of account holders, financial institutions, and communities that might benefit from reinvestment of assets.

Option two - the proposed scheme:

B.33 If a scheme is introduced some account holders will be more aware of their dormant accounts than they may otherwise have been. They will benefit from the comprehensive reunification exercise the banking sector has committed to undertake before the scheme's launch. Once the scheme is operational the BBA and BSA intend to have additional procedures in place to make account holders more aware of their dormant accounts and how they can access them.

B.34 Enabling legislation will give financial institutions the flexibility to build on existing self-regulatory systems such as the Banking Code and other procedures that trace dormant accounts. These will be familiar to customers. Participating institutions may also benefit from goodwill generated from releasing unclaimed money to the community.

B.35 Communities will benefit from funds that would not otherwise have been available. The self-regulatory aspects of the scheme should maximise the proportion of assets available for reinvestment in the community and minimise the scheme's running costs.

Option three – a compulsory scheme:

B.36 The benefits of a compulsory scheme to account holders, financial institutions, and communities are likely to be similar to those for option two. The existence of additional benefits would depend on the exact design of the compulsory scheme. For example, if a compulsory scheme involved the setting up of a public searchable register of unclaimed assets some consumers might become more aware of their dormant accounts. This could however involve additional risk and costs and involve the mass transfer of confidential data concerning individual customers. This may also reduce assets available for reinvestment in the community.

COSTS

Option one - do nothing:

B.37 Doing nothing would not create additional costs for account holders, financial institutions, and communities.

Option two – the proposed scheme:

B.38 The proposed scheme should result in no additional costs for account holders. The scheme will provide a legal right for account holders to reclaim their money at any time. Account holders will continue to contact their relevant banks and building societies as now.

B.39 In order to minimise costs to financial institutions the proposed scheme will build on existing arrangements for reuniting and reclaim. Any additional costs are expected to be small and incremental. These could include:

- identifying dormant accounts meeting a statutory definition of an unclaimed asset. This should have a minimal impact on financial institutions' existing procedures. Institutions already undertake similar checks to ensure the security of funds held in accounts that have not been accessed by account holders over a prescribed period of time. The proposed scheme will allow institutions to use their existing systems capabilities to identify their dormant accounts;
- administration costs relating to transferring unclaimed assets to the scheme, and claiming money back from the reclaim fund to reimburse account holders; and
- the costs to audit money transferred to and reclaimed from the central reclaim fund.

B.40 Financial institutions have been unable to quantify the administration costs relating to the scheme but these are expected to be small. We would welcome further information on costs, including audit costs. The most significant cost to institutions is likely to be audit. The audit cost will depend on the size of the institution, its quantum of dormant accounts and systems to record them. However, for illustration, if the annual cost per institution were on average between £10–25,000, the total cost to participating institutions could be around £1.2–3m.³³

B.41 Although not required by legislation, the participating institutions have agreed to carry out a comprehensive reunification exercise before the scheme is launched. This may lead to increased advertising and administration costs, but should reduce subsequent costs for handling reclaims.

Option three – a compulsory scheme:

B.42 As with option two, it is likely that a compulsory UK scheme would seek to ensure that account holders incurred no additional costs and that their legal right to reclaim their money is protected.

³³ If based on the institutions subscribing to the Banking Codes, about 117 institutions.

B.43 A compulsory scheme would oblige all financial institutions meeting a statutory definition to take part in the scheme. These institutions could incur similar types of costs to option two but these could be higher as compulsory schemes tend not to make allowances for institutions with differing systems capabilities. Some institutions may need to align their internal procedures or upgrade them in order to comply with statutory requirements. Schemes elsewhere place specific obligations on relevant institutions relating to the reunification of account holders with their assets, the identification of unclaimed assets, the transfer of assets to the scheme, record keeping and providing data on account holders for inclusion in a central register.

SMALL FIRMS IMPACT TEST

B.44 Small firms are defined by turnover, balance sheet size or number of employees. 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.³⁴ It is unlikely any of the financial institutions likely to participate in an unclaimed assets scheme would count as small firms under this measure. As the proposed scheme is voluntary, small firms will not be compelled to take part.

COMPETITION ASSESSMENT

B.45 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.³⁵ This, and the voluntary nature of the scheme suggest there is unlikely to be any significant competition impact.

B.46 As with the proposed scheme it is likely that the value of assets caught by a compulsory scheme using a 15 year definition would 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.

ENFORCEMENT, SANCTIONS AND MONITORING

B.47 The proposed legislation would enable but not compel financial institutions to take part in the scheme. There are some obligations for affected institutions, for example they will need to obtain an audit of money transferred to and from the scheme in order to participate. They will continue to be subject to the same regulatory framework and sanctions, underpinned by the Financial Services Authority and the Banking Code Standards Board.

B.48 If the scheme were compulsory, as well as complying with the scheme's obligations institutions might also need to prove compliance to a regulatory authority at periodic intervals. This could go beyond the proposed audit requirements to include a statutory inspection regime and fines or other sanctions for non-compliance.

³⁴ SI 2004 No.16 – The Companies Act (Accounts of Small and Medium-Sized Enterprises and Audit Exemption) (Amendment) Regulations 2004.

³⁵ Customer deposits make up the leading source of assets in the UK banking industry, at 59 per cent with a value of around £4.01 trillion, United Kingdom – Banks', Datamonitor (November 2004). Estimates from the financial institutions expected to take part in the proposed scheme put the value of unclaimed assets meeting the 15 year definition at around several hundred million pounds.

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