

STATES OF JERSEY



PROPOSED DORMANT BANK ACCOUNTS (JERSEY) LAW 200-: GREEN PAPER DECEMBER 2008

**Presented to the States on 15th December 2008
by the Minister for Economic Development**

STATES GREFFE

Green Paper

d Dormant Bank Accounts (Jersey) Law 200-

December 2008

Purpose of consultation

To invite comments on a proposed Dormant Bank Accounts (Jersey) Law 200-

Type of consultation

Written paper

Closing date for consultation

Friday 27th February 2009

Summary

Unlikely as it may seem, it appears that a significant number of account holders forget about or lose track of their bank accounts containing deposits. Although banks attempt to reunite these funds with their owners, this is not always possible, often because the customer has neglected to inform the bank of a change of address. These deposits may amount to a substantial total, particularly in a jurisdiction like Jersey with a significant international banking sector.

It is proposed that these dormant deposits should be reinvested for the benefit of the Island as a whole, while preserving the rights of the account-holders, should they reappear. Similar systems have been introduced in several other countries including Australia, Canada, Ireland, New Zealand, Spain and the United States, and the UK Dormant Bank and Building Society Accounts Act 2008^[1] was passed in November 2008.

Public submissions – Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary, etc). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

Please send your comments to:

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| <p>James Mews Director Finance Industry Development Chief Minister's Department 5th Floor Cyril Le Marquand House The Parade St. Helier JE4 8QT</p> <p>Telephone: 01534 440444 Facsimile: 01534 440408 e-mail: j.mews@gov.je</p> | <p>Robert Kirkby Jersey Finance Limited 27 Hill Street St. Helier Jersey JE2 4UA</p> <p>Telephone: 01534 836004 Facsimile: 01534 836001 e-mail: Robert.Kirkby@jerseyfinance.je</p> <p>It is the policy of Jersey Finance to make individual responses it receives available to the Economic Development Department upon request, unless the respondent specifically requests otherwise.</p> |
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This consultation paper has been sent to the following individuals/organisations:

The Public Consultation Register

1. Overview of proposed Scheme

- 1.1. It is proposed that the scheme would operate using a central reclaim fund into which the deposits in dormant accounts will be paid by the banks. An account will be considered dormant for this purpose if there have been no transactions and no communication from the account-holder for 15 years. The reclaim fund will retain sufficient funds to meet any likely future claims by the original owners of the assets. The reclaim fund will then distribute the remainder of its funds to good causes in Jersey.
- 1.2. Comments are invited as to the precise mechanism for distributing these funds and deciding which causes should benefit. The reclaim fund will be a free-standing body and will be self-funding. It will be charged with prudently investing the funds retained to meet future demands.

2. Definition of ‘Dormancy’

- 2.1. It is suggested that an account should be considered dormant if there have been no transactions and no communication from the account-holder for a period of 15 years. Automatic periodic payments of accrued interest into the account would not be considered as transactions. This test is similar to that used in Ireland and the UK. While there are other models – Canada and US use a shorter dormancy period (varying by state, in the case of the US), New Zealand uses a period of 8 years, but 25 years in the case of “savings banks” which in fact appear to include all major banks – it is proposed that the scheme should mirror the UK provisions in order to make it easier for those banks who have their parent or head office in the UK to apply the same rules in Jersey leading to efficiencies.
- 2.2. Another possibility considered was to apply different periods to different sorts of accounts. For instance, a current account would ordinarily be considered dormant if there were no transactions for a period much shorter than 15 years. On the other hand, it is conceivable that someone might simply not wish to carry out any transactions on a savings account for a period exceeding 15 years, if they had no immediate need of the funds and were content to allow interest to accrue. However, any concern in relation to such accounts would be alleviated by ensuring that the bank made full enquiry before transferring any deposit to the reclaim fund in order to establish whether the account was genuinely dormant and whether the account-holder could be located. For reasons of simplicity and efficiency such a model is not proposed.
- 2.3. Some particular problems may arise in relation to ‘no mail’ accounts, where the account-holder has requested the bank not to contact them. In this case, the bank cannot (in accordance with this agreement) contact the account-holder to verify the account’s status. For this reason the UK excludes such accounts from the scope of the scheme. However, the Irish scheme includes such accounts. It is thought that the number of such accounts is small, and therefore that the administrative difficulties of providing for special treatment may be disproportionate. Even on a ‘no mail’ account, one would ordinarily expect the account-holder to engage in some transactions on the account during a 15 year period. Of course the account-holder will always be entitled to reclaim the balance from the reclaim fund. Therefore it is proposed not to make a special case for these accounts and to include them in the scheme.
- 2.4. In the case of accounts with a fixed term, one would not ordinarily expect any correspondence from the customer during the fixed term, and so it is proposed that the 15 year dormancy period should run from the expiry of this term, which mirrors the UK scheme.
- 2.5. A further category of accounts to consider are non-personal accounts, for instance those held by companies or partnerships. Comments are invited as to whether these should be within the scope of the scheme and, if so, whether a different test of dormancy should apply.

Proposal: It is proposed that an account will be considered as dormant if 15 years pass with no customer initiated transactions and no communication from the customer regarding the account (whether by post, telephone, e-mail or in person). In the case of fixed term accounts, this 15 year period will run from the expiry of the fixed term. No exception will be made for ‘no mail’ accounts.

3. Reunification

- 3.1. It is important that before any transfer is made to the reclaim fund, banks will attempt to contact the account-holder to alert them to the fact that the account still exists and warn them that the balance is about to be transferred in order to avoid the situation where there is widespread reclaiming of deposits from the reclaim fund. If the account-holder responds, the account will cease to be treated as dormant and the balance will not be transferred.
- 3.2. However, there are some difficulties in making contact in such cases. Banks frequently cease writing to an address from which post has been returned, because of the risk of fraud. If the account-holder had a known address, then the account would probably never have become dormant in the first place. There is arguably little point in writing to a customer's last known address, if post has been returned. An alternative might be place an advert in, say, the Jersey Evening Post. However, if such an advert named the account-holder, there would be an obvious risk of fraud. There is also the problem that a large number of Jersey account-holders are not resident in Jersey and would therefore be most unlikely to see such an advert. Unless the balance was very large, it would seem disproportionate to employ a private investigator to attempt to track down the customer.
- 3.3. In Ireland, banks are required to take reasonable steps to notify the account holder, unless they have been specifically requested not to contact him or her or the balance is less than €100. If the bank is unable to contact on the account holder, or either of the exceptions apply, then the bank must take out an advert in two national papers and the Iris Oifigiúil (Irish Gazette) stating that they hold dormant accounts. In either case the account holder then has 6 months to make a transaction on the account. Comments are invited as to whether a *de minimis* account balance should apply below which the bank need not write directly to the account-holder before treating the account as dormant and, if so, at what level this should be set?
- 3.4. In the UK as the scheme will be voluntary there are no steps that must be taken in order to reunite funds with the customer. However, the UK will conduct a public awareness campaign in the 12 months preceding the scheme's introduction. The intention is that this will alert people to the possibility that they may have a dormant bank or building society account and will inform them how to go about investigating the possibility of making a claim. There is a website: <http://www.mylostaccount.org.uk/> at which a free search may be made.
- 3.5. It would be possible to set up a similar central search facility for Jersey bank accounts, for instance if the executors of a deceased account-holder were aware that he or she had a Jersey bank account, but did not know at which bank. However, because Jersey is a much smaller jurisdiction than the UK, the costs will be proportionately greater. These costs could be met from funds recovered from the scheme. The feasibility and likely cost of such a facility will be investigated further.
- 3.6. Considering these points in the round, it appears that in practice, in many cases, there will be little that banks can do to notify the account-holder. However, the account-holder will always be able to reclaim the money from their bank, who in turn will reclaim the monies from the reclaim fund. From the customers point of view, very little will change, and so it is suggested that the problem is not as acute a problem as it may first appear. Nevertheless, it would be desirable to reunite account-holders with their money wherever possible and suggestions are invited as to how this might practically be done.
- 3.7. A Jersey public awareness campaign may suffer from the same problem as mentioned above in relation to taking out adverts concerning individual dormant accounts, that the account-holder will frequently not be in Jersey.
- 3.8. It is also thought that dormancy will become less common in future years, given recent developments in communications technology. In particular, banks will often retain email and mobile telephone contact details for their customers which will remain valid after a change of address.

Proposal: It is proposed that banks will write to customers warning them that their account is about to be made dormant. However, for anti-fraud reasons, banks will not do so where post has been returned. A publicity

campaign will be conducted prior to the scheme coming into operation to ensure that at least Jersey residents are aware of the issue of dormant bank accounts. The feasibility of establishing a central search facility for Jersey dormant bank accounts will be investigated.

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4. The Reclaim Fund

- 4.1. If an account is dormant, and if attempts to contact the account-holder have failed, then the balance of the account will be paid into the reclaim fund. The bank's liability to the customer will then be extinguished, although the bank will still be required to keep sufficient records to identify the account-holder should he or she reappear.
- 4.2. The UK's scheme establishes a free-standing reclaim fund, independent of government, the banking sector and the distribution mechanism. However, given the smaller scale of Jersey it is not clear that this would be an economical arrangement. In particular, it is suggested that the reclaim fund could helpfully be combined with the distribution mechanism, provided full transparency was maintained, e.g. by publishing public annual accounts showing the amounts distributed, and to whom, and the amount retained to meet potential liabilities.
- 4.3. One possibility would be for the reclaim fund to be administered by Treasury and Resources, along with the strategic reserve. This would have the advantage of drawing on existing expertise and saving costs. However, there is a risk that the operation of the fund would be perceived as being too close to government and that it might be used to subsidise costs which would otherwise be States expenditure.
- 4.4. Our proposal is to set up an independent body with (unpaid) trustees nominated by the States, the banking industry and the charitable sector, and with the possibility of additional trustees being co-opted. This body would be charged with investing the funds collected, making payments for reclaims and distributing funds to charities. To carry out these functions the body would have a small secretariat, the cost of which would be borne by the fund. It is envisaged that the investment function would be delegated to a suitable professional, whose fees would again be borne by the fund.
- 4.5. The reclaim fund would maintain sufficient funds to meet likely claims by reappearing account-holders. However, given the 15 year dormancy period and that attempts to contact the accountholder will have been made prior to the transfer, it is not anticipated that the level of reclaims will be high. After a few years' experience, the reclaim fund will be able to anticipate likely levels of future reclaims and plan accordingly.
- 4.6. The retained funds will be prudently invested and the profits added to the fund. The costs of the scheme will be paid for out of monies transferred from dormant accounts and/or from profits on investments. The remaining funds, after deductions to meet anticipated future claims and to cover costs, will be paid to good causes.

Proposal: It is proposed that the reclaim fund should be an independent body, with trustees nominated by interested parties, and that it should also manage the distribution of funds to good causes. Further consultation will follow on the exact make-up, legal status, constitution and procedure of the reclaim fund.

5. A Compulsory or Voluntary Scheme

- 5.1. One of the key questions about any scheme to reinvest deposits in dormant accounts is whether it should be compulsory (as in Australia, Canada, Ireland, New Zealand, Spain and the United States) or voluntary (as in the UK scheme).
- 5.2. In a compulsory scheme, banks would have no choice but to participate. If an account met the statutory criteria for dormancy, then the balance would have to be made available to the scheme. There would be statutory requirements on the banks in relation to reporting, record-keeping and contacting asset owners,

and sanctions for non-compliance with these requirements.

- 5.3. In the case of the Irish scheme, it operates on an annual basis, so that once a year banks are required to examine their accounts to see if any have become dormant and notify the account-holders (or publish notices in the press) accordingly. If the account-holders fail to claim the accounts within 6 months, the banks are then required to transfer the funds to Dormant Accounts Fund. There is an inspection regime to ensure that banks comply.
- 5.4. In a voluntary system, banks would choose whether or not to transfer deposits of dormant accounts into the system. It could be left partly to the banks' discretion to identify which accounts were dormant. But there is a risk that banks would simply choose not to participate and this could result in Jersey unclaimed assets being taken by head offices in the UK. In the UK it appears that key financial institutions have committed to participate in the scheme.

Proposal: It is proposed that the scheme should be compulsory in order to ensure that Jersey unclaimed assets are not lost to the proposed UK scheme.

6. Reclaiming Dormant Accounts

- 6.1. In New Zealand a central register of "unclaimed money" is maintained by the Inland Revenue Department, to which the original account-holder must apply if he or she reappears. However, the proposed UK scheme will leave the account-holder to deal with the bank directly, as does the Irish scheme. Accordingly, the bank will continue to manage the account information.
- 6.2. Under a UK-type scheme, an account-holder would not need even to be aware that the account had been made dormant. He or she would simply apply to the bank for funds in the usual way. The bank would then take steps to verify the account-holder's identity and, if satisfied that the person claiming really was the person entitled to the account, would pay the balance with accrued interest, or reinstate the account, as appropriate. The bank would then pass the claim on to the reclaim fund, which would reimburse the bank on an annual (or other periodic) basis for monies paid out.
- 6.3. The principal advantage of such a scheme is that the procedure from the account-holder's point of view remains exactly the same as before the account was made dormant and transferred to the reclaim fund. It also does not raise the same issues of customer confidentiality as would be the case if customers' identities were to be verified by the reclaim fund directly (which would require the banks to pass over the customers' details).
- 6.4. The Irish scheme is slightly different, in that the bank applies to the relevant agency before paying the money to the account-holder. The bank has 28 days to notify the agency, which has 21 days to process the claim and the bank then has a further 7 days to forward payment to the accountholder. There could therefore be a delay of nearly 2 months in returning the money to the accountholder. It is understood that under such a scheme there would also be the administrative inconvenience of the bank making separate applications to the reclaim fund in relation to each individual reclaim.
- 6.5. If a central register is used, then the account-holder would need to apply to the reclaim fund directly. (If they applied to the bank, not realising the account had been made dormant, then the bank would redirect them to the reclaim fund.) The reclaim fund would perform the necessary checks on the customer's identity, on the basis of information provided by the bank, and would then pay over the balance, plus accrued interest at the applicable contract rate.
- 6.6. This would have the advantage for the account-holder that it would not be necessary to remember at which bank the account was held. It may also be simpler for the reclaim fund to pay the money directly to the account-holder, rather than the bank acting as intermediary. However, it has the disadvantage that it would pose a considerable administrative burden on the reclaim fund, rather than relying on banks' existing systems. This would increase costs and reduce the amount of money being paid to good causes. It

may also be less convenient for account-holders and there is an issue of confidentiality as mentioned above.

Proposal: It is proposed to adopt a UK-type scheme, where the customer continues to apply to the bank in relation to the account, even after it has been made dormant and the balance transferred to the reclaim fund. The bank will act as agent for the reclaim fund and will be reimbursed periodically. It is suggested that this could most easily be done by deducting any reimbursements due to the bank from the payments of dormant account balances the bank will be making.

7. Interim Steps

- 7.1 The UK Dormant Bank and Building Society Accounts Act 2008 received royal assent of 26th November 2008 but will require a statutory instrument to be brought into force. Concern has been expressed that when the UK scheme becomes active, Jersey branches of UK banks may repatriate the balances of dormant accounts to head-office, where they will be paid to the UK reclaim fund under its scheme.
- 7.2 The money in Jersey bank accounts may therefore be lost to Jersey and used for UK good causes. In order to forestall this, while still leaving time for full consideration of how a Jersey scheme should work, it is suggested that interim measures be put in place to keep the funds in Jersey pending the establishment of a Jersey dormant bank accounts scheme.
- 7.3 It is proposed that a Dormant Bank Accounts (Jersey) Law 200- be passed containing the core of the legislation, setting out the definition of dormant bank account and that such balances must be paid into the reclaim fund, but leaving the establishment and operation of the reclaim fund and the details of the distribution to good causes to Regulations.
- 7.4. An alternative possibility would be to bring forward a simple piece of legislation, pending a Dormant Bank Accounts (Jersey) Law 200-, to the effect that Jersey banks must retain in the Island sums at least equal to the total balances of all dormant accounts. However, this would still require a definition of “dormant” to be agreed.
- 7.5. A further unrelated interim measure which may also be considered would be to phase the scheme over several years. For instance, it could apply first to accounts which have been dormant since a certain date, then to accounts from a certain later date and then finally to all dormant accounts. This would have the effect of staggering the initial, presumably large, transfer of monies into the reclaim fund, but would probably lead to inefficiencies.

Proposal: It is proposed to bring in a Law covering the core principles of the scheme at the earliest possible date, leaving more detailed provisions to be set out in Regulations.

8. Dormant Bank Accounts and *bona vacantia*

- 8.1. The Crown has an ancient right to ownerless goods. In Jersey, this right is exercised by H.M. Receiver General on behalf of the Crown. Income arising from property claimed as *bona vacantia* is paid (less the Receiver General’s costs) to the States as a contribution to the costs of the Crown officers, via H.M. Treasury. Commonly goods become *bona vacantia* if the owner dies intestate with no known kin or if the goods are owned by a dissolved company.
- 8.2. Nothing in the present proposal is intended to detract from the Crown’s rights. If banks are aware that an account-holder has died, but no claim is made on the account by an executor or administrator, they are expected to inform the Receiver General. He will then make efforts to identify any heir of the deceased and will hold the funds *par voie de garde* for a period of 10 years in case any heir comes forward. After the expiry of that period, the money will pass to the Crown. Such an account will not be treated as dormant.

9. Inclusion of other Assets in Scheme

- 9.1. The scheme could potentially be extended to other categories of unclaimed assets, e.g. life assurance policies, shares, dividends and the contents of safe deposit boxes. However the proposed scheme in the UK is limited to dormant accounts. It is not proposed to extend the scope of the planned Jersey scheme beyond this at the moment. Once the scheme is running successfully, further thought will be given to this possibility, building on the experience in relation to dormant bank accounts. In Ireland, dormant accounts are covered by the Dormant Accounts Act 2001, whereas unclaimed life assurance policies are covered by the Unclaimed Life Assurance Policies Act 2003, a separate piece of legislation applying similar principles. This would seem to accord with a gradualist approach to legislation in this area.

10. Use of the money collected

- 10.1. Two questions arise in relation to the distribution of the funds collected. Firstly, what purposes should it be used for? Secondly, how should the distribution be made?
- 10.2. In England, the money to be collected will be used for certain specified purposes: youth services, encouraging financial capability, increasing financial inclusion and social investment (with the emphasis on the first three). Different priorities will apply in the devolved administrations of Scotland, Wales and Northern Island. The distribution will be carried out by the Big Lottery Fund (but treated separately from its existing distribution of lottery funds).
- 10.3. In Ireland, the money is set aside for programmes or projects that are designed to assist the personal, educational and social development of persons who are economically, educationally or socially disadvantaged or persons with a disability and also for any other purpose determined by the Minister. The distribution is made by a specially constituted Dormant Accounts Disbursements Board, essentially nominated by the Minister.
- 10.4. There is no existing Jersey body equivalent to the Big Lottery Fund which could carry out the distribution task. Therefore it seems that a new body will be needed for this role. As it would not be efficient to create 2 new bodies under the proposed new Law, it is suggested that the reclaim fund should also carry out the distribution function. That being the case, it may be that some other name would be more appropriate. As mentioned above, this dual role could conceivably be performed by the Treasury and Resources Department on behalf of the States, but that might give rise to problems of perceived political interference in the distribution mechanism and/or the money recovered from dormant accounts being treated in effect as an additional States income stream. Therefore it is proposed that this role should be performed by an independent body as set out above.
- 10.5. A decision needs to be made (and comments are invited) as whether we should use the money raised for some specific purposes or for charity generally. If it is to be for specific purposes, some purposes need to be chosen. If the money is to be used for good causes generally, a mechanism will need to be established to decide which particular good causes to benefit. It may well be that this will take the form of local charities making applications to the distributor, who would assess those applications in the light of the money available. The distributor will clearly need to be given some principles to apply in assessing the applications.

Proposal: It is proposed that the distribution function be carried out by the reclaim fund, which will be an independent body as set out above. Comments are invited as to whether the use of the funds should be focussed on specific or for general purposes, and what such purposes should be. Further consultation will follow on the detailed mechanism by which the reclaim fund will decide who to make distributions to and the size of such distributions. The States will then be asked to pass Regulations to implement the results of such consultation specifying such in a later debate after the primary law has been passed.

11. Questions for Consultation

- 11.1 Should a public awareness campaign (beyond the usual distribution of information about new legislation) be conducted prior to the scheme coming into effect? If so, what form should such a campaign take?
- 11.2 What procedures should be used to attempt to contact the holders of accounts before classifying them as dormant? Should there be a *de minimis* account balance, below which the bank need not attempt to contact the account-holder directly? If so, what level is appropriate?
- 11.3 Should account-holders continue to deal with banks following a transfer of the deposits to the reclaim fund, or should there be a central register, so that customers would make a claim directly on the reclaim fund? If claims are made to banks, should the bank concerned pay out the funds as soon as it is satisfied that the claim is valid, or should it first await receipt of the funds from the reclaim fund?
- 11.4 Is the suggested test for dormancy appropriate, i.e. that there should be no transactions or communication from the account-holder for 15 years? Should different dormancy periods apply to different sorts of accounts?
- 11.5 Should a central search facility for dormant accounts be set up? If so, who should run it and how should it be financed?
- 11.6 Should the reclaim fund be based within government (e.g. Treasury and Resources) or should it be an independent body? If the reclaim fund is to be an independent body, how should the trustees/commissioners be appointed? Should the distribution of the money be carried out by the reclaim fund or by a separate body?
- 11.7 Should the scheme be voluntary or compulsory?
- 11.8 Are any interim measures necessary to preserve Jersey's position in the light of the UK Dormant Bank and Building Society Accounts Act 2008? If so, what measures would be appropriate? Should the scheme be introduced in phases?
- 11.9 Should the money raised be used for the benefit of specific good causes? If so, which ones? If the money should be used for charity generally, on what basis should the distributor decide how to allocate the money available?
- 11.10 What factors should be taken into account in assessing applications for grants? Should grants be made for running costs or for capital expenditure or for both? Should there be a requirement for matching contributions?

[1] Available at http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080031_en.pdf