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Dormant Bank and Building Society Accounts Bill [HL]

Bill 150 of 2007-08

This short Bill provides the legislative framework for an intended 'dormant assets' scheme. Dormant assets are those that have no clear owner; the owner has not used the account for some time and cannot be contacted. The Bill provides a mechanism by which assets so identified can be managed and distributed for defined social purposes. It also provides necessary legal protections for institutions participating in the scheme.

It is based on the proposition that financial assets that have no obvious owner should be put to use rather than simply sit, forgotten, in bank and building society accounts.

The Bill received Second Reading on 4 October 2008 and its Committee stage on 14-16 October.

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Summary

Over a number of years the existence of unclaimed financial assets has attracted increasing attention. Practice in other countries of putting such assets to 'good use' and the experience of the impact of National Lottery 'good causes' provided two impulses for consideration of a UK scheme which has resulted in this Bill.

The Bill has been preceded by a long period of consultation between government and financial institutions over the principles and details that such a scheme would need. The result of these discussions is a voluntary scheme under which dormant bank and building society accounts are to be transferred to a Central Reclaim Fund.

The scheme will only apply to money in private sector bank and building society accounts in which there has been no activity for more than 15 years. Dormant accounts in National Savings are not to be included in the scheme.

Money transferred to the Reclaim Fund will be distributed nationally by the respective Parliaments and Assemblies. In England the priorities for distribution are youth projects and to improve financial capability. Should further funds become available there is a general consideration towards investing in the "third sector". This is unlikely to be the major destination of funds. The other countries of the UK can determine their own priorities.

There are no precise estimates of the initial amount that will be forwarded to the fund, but there is a working assumption that it will be no more than £500 million. This is likely to be reduced considerably as encouragement by the Government and initiatives of the financial service sector to repatriate accounts to their rightful owners receive greater publicity and increase consumer awareness.

In Committee the Government succeeded in overturning all of the amendments inserted in the House of Lords including various aspects on reporting and accountability (clauses 6, 12 and Schedule 1) and removing the requirement that Parliament approve administrative orders to the Big Lottery Fund (clause 23). The Government also made further changes to the Bill to bring deceased account holders into the scheme (clause 1); reversed a change (clause 2) that would have potentially excluded the larger building societies from the; to better define dormancy so as to take account of those cases where there are rules regarding the access of an account for a certain period (clause 11); and to permit the time limit defining dormancy to be made by regulation (clause 11).

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I Introduction

A. Background

The *Dormant Bank & Building Society Accounts Bill [HL Bill 2]* was published on 7 November 2007 and was introduced into the Lords on the same day. It was a short, 30 clause Bill with three schedules, divided almost equally between provisions dealing with the collection of dormant accounts and provisions that dealt with their distribution. It had its Second Reading in the Lords on 21 November 2007[1] followed by a four-day Grand Committee starting 10 December 2007.

The Bill passed to the Commons where it received Second Reading on 6 October and Committee stage on 14-16 October 2008, taking only three of its four allocated sittings. The Committee did not take oral evidence and did not receive any written evidence.

Background to the issues covered in the Bill, including an account of the debates that occurred in the House of Lords, can be found in Library Research Paper RP 08/73, available at:
http://www.parliament.uk/commons/lib/research/rp2008/rp08-073.pdf

For further information and comment, see HM Treasury website:
http://www.hm-treasury.gov.uk/unclaimed_assets_scheme.htm

The Bill as amended in Committee, along with explanatory notes etc., is available at:
http://services.parliament.uk/bills/2007-08/dormantbankandbuildingsocietyaccountshl.html

II Committee Stage, 14-16 October 2008

The Public Bill Committee took place between 14 and 16 October 2008. It used three of the four sittings allotted to it and was reported with a small number of amendments, all made by the Government. The Committee had 16 Members: two Liberal Democrat, five Conservative and nine Labour, including the Economic Secretary of the Treasury. The full membership was as follows:

Chairmen: Joe Benton, William McCrea

Members:
Barlow, Ms Celia *(Hove)* (Lab)
Blizzard, Mr. Bob *(Lord Commissioner of Her Majesty's Treasury)*
Browne, Mr. Jeremy *(Taunton)* (LD)
Dean, Mrs. Janet *(Burton)* (Lab)
Ennis, Jeff *(Barnsley, East and Mexborough)* (Lab)
Field, Mr. Mark *(Cities of London and Westminster)* (Con)
Hoban, Mr. Mark *(Fareham)* (Con)

[1] HL Deb 21 November 2007, c870

† Howell, John *(Henley)* (Con)
Jones, Mr. Martyn *(Clwyd, South)* (Lab)
Levitt, Tom *(High Peak)* (Lab)
McCarthy, Kerry *(Bristol, East)* (Lab)
Mallaber, Judy *(Amber Valley)* (Lab)
Newmark, Mr. Brooks *(Braintree)* (Con)
Pearson, Ian *(Economic Secretary to the Treasury)*
Taylor, Matthew *(Truro and St. Austell)* (LD)
Walker, Mr. Charles *(Broxbourne)* (Con)

The Committee did not receive any written evidence.

Proceedings in Committee are outlined below in chronological order. The Government made several changes to the Bill in Committee; these were:

- In **clause 1** to bring deceased account holders into the scheme;
- **Clause 2** include all big building societies into the scheme;
- **Clauses 6 and 12**, on various aspects of reporting and accountability, were removed from the Bill, along with relevant parts of Schedule 1, all of which were inserted in the House of Lords;
- In **clause 11** to better define dormancy so as to take account of those cases where there are rules regarding the access of an account for a certain period;
- In **clause 11** so that the time limit defining dormancy could be made by regulation; and
- In **clause 23**, to remove part inserted in the House of Lords requiring Parliament to approve administrative orders to the Big Lottery Fund.

A. Debates related to the definition of the scheme (cl. 1-14)

Jeremy Browne for the Liberal Democrats proposed an amendment to clause 1 to clarify the means by which **a depositor can be reunited with their money** if they make a claim on their bank more than 15 years after having last touched the account. Both Mr Browne and Mark Hoban for the Conservatives expressed concerns about the exchange of data between individual banks and the reclaim fund. The Minister, Ian Pearson, argued that there was not necessarily any need for customers' personal information to change hands as customers should be able to go into a bank and get their money back.

It will then be for the bank to make a claim on the reclaim fund: customer records are expected to be retained by the bank, not the fund. There might be a problem in exceptional cases where, for example, a bank or building society might no longer exist and/or the records might be imperfect. In such cases the provisions of clause 14 would allow for the transfer of customer information from a bank or building society to the reclaim fund to assist a customer wishing to reclaim their money. The Minister was clear that "subject to verification checks, which one would expect a bank or building society to want if someone had not been in touch with them for 15 or 20 years, a person should be

able to get the money immediately".[2] It is worth pointing out that the details of how the scheme will be operated are not part of the Bill and as such are up to the participating institutions.

Government amendments 8 and 10 proposed to amend clause 1 to bring **deceased account holders** into the scheme. The Minister explained:

> The amendments are technical and arise from debates in the other place. Our consistent position has been that all accounts should be eligible for transfer into the scheme, provided that they meet the test of dormancy set out in the Bill. That includes accounts opened a long time ago. As the Bill is currently drafted, if a customer dies it is not possible for their balance to be transferred to the reclaim fund and the bank's liability extinguished, because the account is not one that the customer holds with the bank. That presents difficulties, as banks will not know whether older, inactive accounts are owned by living or deceased persons. We certainly intend to address that point, which was raised in the other place. It is unlikely that banks or building societies would know whether account holders were living or deceased. We appreciate what the banks and building societies have told us—that they wish to have certainty on that point so that they are not constrained in their ability to participate in the scheme. We are happy to propose the amendments, which are a technical clarification confirming that the accounts owned by deceased persons are eligible for transfer into the scheme.[3]

There was general agreement on the amendments and they were added to the Bill.

The Government proposed further amendments to undo changes made to the Bill in the House of Lords regarding **smaller institutions** (so-called 'second tier participation'). The Bill allows for banks or building societies with balance sheet assets below £7 billion to transfer an agreed proportion of their dormant funds to charities with which they consider they have a special connection and thus not participate in the reclaim fund. The Lords passed an amendment which would have the effect of removing all building societies (if they wished) from contributing to the CRF. The Government amendments brought clause 2 back to its original state whereby only institutions with assets of less than £7 billion need not participate. The Committee divided on the issue and the Government won the vote 8-5.[4] The Government's point is that the money which societies over the £7 billion mark would provide, was too substantial a sum to be ignored. They also argued that banks were not "really in the best position to consider consistently the needs of the wider communities throughout the United Kingdom".[5] By inference government is.

On both clauses 3 (the assets-limit condition) and 5 (functions etc. of a reclaim fund) opposition parties put down amendments so that any **regulations** made under those sections would be made under the affirmative procedure.[6] Neither were successful; the Committee divided on the Conservative amendment to clause 5, which was lost 8-6.[7]

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2 PBC Deb 14 October 2008, cc4-8
3 Ibid., c9
4 Ibid., cc9-14
5 Ibid , c10
6 i.e. draft regulations would be laid before both Houses of parliament to be approved
7 PBC Deb 14 October 2008, cc14-12

In the course of the debate on stand part of clause 5, Charles Walker asked the Minister for further information as to what **asset classes the reclaim fund would be allowed to invest in**.[8] In a letter dated 17 October, the Minister stated that:

> … the reclaim fund will be expected to develop a prudent and appropriate investment policy, in line with FSA requirements which will ensure that it holds back sufficient assets to meet customer reclaims. The Government does not propose specific requirements in the Bill that constrain the reclaim fund's ability to manage its money efficiently, as a private sector company. Oversight of the reclaim fund's investment policy will be an aspect of FSA regulation. In normal circumstances, the Government would not use its direction making power under the Bill to intervene in the day to day running of the reclaim fund.[9]

On **the accountability of the reclaim fund**, the Government proposed to leave out clause 6 of the Bill, which was inserted in the Lords, to require the reclaim fund to report directly to Government and to Parliament; the Minister tabled amendments with a similar intention to Schedule 1. In lieu, the Government proposed amendments 21-15 to require the reclaim fund to publish its annual report and accounts as soon as possible after the end of each financial year. [10] There was a similar debate on clause 12 of the Bill, which was inserted in the House of Lords, and would require the reclaim fund to make a **triennial report to Parliament**. The clause was removed from the Bill without a vote.[11]

There was broad consensus on amending clause 11 of the Bill to **more tightly define 'dormancy'**. A problem arises where there is money in an account which, by definition, is an account where an account holder has requested no contact, or the account is of a type that prevents or includes a disincentive for making withdrawals. In these circumstances, "the 15-year clock should start ticking only when those conditions expire at the end of the term". Both the Conservatives and the Government proposed amendments to correct this; the Government amendment was adopted without a vote.[12]

The Government proposed further amendment to clause 11 whereby any **change to the time limit defining dormancy could be made by regulation** under the negative procedure.[13] The Conservatives proposed a similar amendment, but subject to the affirmative procedure; the Government amendment was added to the Bill.[14]

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8 Ibid., c22
9 Letter from Ian Pearson MP to Charles Walker MP, 17 October 2008
10 PBC Deb 14 October 2008, cc22-28
11 PBC Deb 15 October 2008, cc54-61
12 PBC Deb 14 October 2008, cc35-36
13 Regulations are laid and are subject to annulment in the House, what tends to happen under this procedure is that the Leader of the Opposition prays against the Regulation or Order and a debate in held, usually in Delegated Legislation Committee; the last time there was an actual annulment was almost 30 years ago
14 PBC Deb 15 October 2008, cc41-44

B. Debates related to the distribution of monies (cl. 15-25)

Mr Hoban for the Conservatives proposed an amendment to clause 17 of the Bill to make clear that **any money from the reclaim fund should be considered in addition to Government spending**. He explained the rationale behind his clause:

> People whose money will be transferred from their dormant accounts to the reclaim fund and then to the Big Lottery Fund will want to know that that is not a substitute for Government expenditure, that it is increasing the resources available for youth services or for financial inclusion. There is no guarantee of that in the Bill. If the choice of the three causes in England had been different, the concern might not be relevant. The problem arises because there is Government expenditure on the provision of youth services, and councils already spend money on it. Financial inclusion is a significant priority not only for the Minister's Department, but for the Department for Children, Schools and Families and the Department for Work and Pensions. I have looked at Government output and know that money is spent on this area.
>
> I do not believe that any Member of this House would want to see the money that taxpayers contribute to financial inclusion drop from £12 million this year to £10 million next year because the Government know that £2 million will come in from dormant accounts. If an additional £2 million comes in, we want to see £14 million spent on that cause so that there is a boost in spending.[15]

The Minister stated in his response that "spending from dormant account money must be additional to the Government's provision". He went on:

> We recognise that unclaimed assets are, in effect, community resources and it is right that they are spent for the benefit of communities. They are not, and must not be, a substitute for Government funding, but they can rightfully complement and add value to the Government's funding streams and strategies, whether at central or local level.[16]

Mr Hoban also raised concerns about clause 18 of the Bill as to **how the dormant account money is to be apportioned between the various countries in the UK** – England, Scotland, Wales and Northern Ireland. He queried why the Bill does not state what the prescribed percentages would be or how the money would be allocated to each country. The Minister stated that it would be logical to use the Barnett principles for dividing the available money.[17]

Both opposition parties tabled amendments to clause 19 to probe **how and on what the reclaim fund's monies should be distributed**. Mr Browne argued that the relevant Government Minister should be able to amend the three areas in which the dormant accounts money can be distributed (meeting the needs of young people, improving financial inclusion, and funding a social investment 'wholesaler'). Mr Hoban explained that the Conservative amendment was to probe whether there was any prioritisation in

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15 Ibid., c62
16 Ibid., c66
17 Ibid., c69

those three areas. The Minister replied that he was confident that there was no need to vary the three chosen areas which are "important and enduring", and that specifying priorities or amounts allocated to each area would insert unnecessary rigidity.[18]

The Government proposed to remove subsection (2) of clause 23, which was inserted in the House of Lords. It concerns **directions to the Big Lottery Fund** and would require Parliament to agree by affirmative resolution to the directions issued to the BLF by the Secretary of State on operational matters such as the BLF's financial management, staffing accounts etc. The Minister argued that nods towards greater transparency had been added to other parts of the Bill and that this was unnecessary; the Government amendment was agreed.[19] There was some disagreement as to who should be **the responsible Minister** in charge of the reclaim fund's operation: the Government proposes that it should be the relevant Minister in the Department of Children, Schools and Families; the Conservatives proposed making the 'Lottery Minister' responsible.[20]

C. Other

Echoing debates in the House of Lords, there was some discussion about New Clause 2, put down by Labour Member Martyn Jones, to give the Treasury the power to make the scheme mandatory. Mr Jones argued:

> I start by underlining what the new clause is not. It does not suggest the introduction of a mandatory scheme. It seeks to enhance the nature of the voluntary scheme, and although it could be used to create a mandatory scheme, that is not its core purpose. It is, however, a crucial bargaining tool that would ensure compliance from the banking industry in handing over money voluntarily to the reclaim fund.
>
> Banks and building societies will be more likely to co-operate if the alternative to non-co-operation is enforced co-operation. In that sense, the new clause would function much like a veto at the Council of the European Union. Its most useful legislative quality would not be its use, but rather the threat or shadow of it looming in the background, which would ensure compliance and debate.[21]

In resisting the new clause, the Minister said:

> The voluntary scheme has to be highly transparent to demonstrate that banks and building societies are delivering on their commitments, maintain public confidence in the scheme and strengthen further the incentives for institutions to reunite customers with their money and genuinely to transfer dormant accounts. We all want to see that. We have already discussed the disclosure requirements, but we believe that the voluntary scheme will work, be transparent and succeed.
>
> Let me turn to the question of having a power to convert the scheme to a compulsory one. In light of the sector's clear and demonstrable support for a

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18 Ibid., cc72-78
19 PBC Deb 16 October 2008, cc81-82
20 Ibid., cc82-84
21 Ibid., c85

voluntary scheme, we see no reason to take a reserve power to establish a compulsory one. Furthermore, we have fundamental concerns about the appropriateness of such a power.

A compulsory scheme would look completely different from a voluntary one. It could not rely on the industry's willingness to establish the reclaim fund. The Bill would have to establish a reclaim fund as, in effect, a public body. It would have to set out the criminal sanctions that would apply to institutions that failed to comply with the scheme, and that would have to be monitored and regulated. Such an enforcement framework would not be compatible with a private sector-run reclaim fund. I could go on, but the implications are clear.[22]

[22] Ibid., c91