Dormant Bank and Building Society Accounts Act 2008

2008 CHAPTER 31

PART 1

TRANSFER OF BALANCES IN DORMANT ACCOUNTS

The general scheme

1 Transfer of balances to reclaim fund

(1) This section applies where—

(a) a bank or building society transfers to an authorised reclaim fund the balance of a dormant account that a person ("the customer") holds with it, and

(b) the reclaim fund consents to the transfer.

(2) After the transfer—

(a) the customer no longer has any right against the bank or building society to payment of the balance, but

(b) the customer has against the reclaim fund whatever right to payment of the balance the customer would have against the bank or building society if the transfer had not happened.

[[F1](2A) A transfer of the balance of a dormant account as mentioned in subsection (1) does not itself—

(a) constitute a breach of trust or fiduciary duty affecting the balance, or

(b) give rise to any other liability of any kind (whether against the transferring bank or building society, the reclaim fund or any other person involved), other than the liability of the reclaim fund arising by virtue of subsection (2)(b).**]**

(3) The reference in subsection (1) to an account that a person holds is to be read as including an account held by a deceased individual immediately before his or her death.

In such a case, a reference in subsection (2) to the customer is to be read as a reference to the person to whom the right to payment of the balance has passed.

Textual Amendments

F1 S. 1(2A) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 6(1)** (with Sch. 1 para. 6(2)); S.I. 2022/582, reg. 2

Modifications etc. (not altering text)

C1 S. 1 applied (6.6.2022) by 1992 c. 12, **s. 26A(2)(a)** (as substituted by Finance Act 2022 (c. 3), Sch. 6 paras. 1, **6**; S.I. 2022/569, **reg. 2**)

C2 S. 1 applied (6.6.2022) by 2008 c. 9, **s. 39(2)(a)** (as substituted by Finance Act 2022 (c. 3), Sch. 6 paras. 2, **6**; S.I. 2022/569, **reg. 2**)

Commencement Information

I1 S. 1 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Alternative scheme for smaller institutions

2 Transfer of balances to charities, with proportion to reclaim fund

(1) This section applies where—

(a) a smaller bank or building society transfers to an authorised reclaim fund an agreed proportion of the balance of a dormant account that a person ("the customer") holds with it,

(b) the bank or building society transfers the remainder of that balance to one or more charities,

(c) the charity, or each of the charities, either—

(i) is a charity that the bank or building society considers to have a special connection with it, or

(ii) undertakes to apply the money in question for the benefit of members of communities that are local to the branches of the bank or building society,

(d) the reclaim fund consents to the transfer to it, and

(e) the charity, or each of the charities, consents to the transfer to it.

(2) After the transfers—

(a) the customer no longer has any right against the bank or building society to payment of the balance, but

(b) the customer has against the reclaim fund whatever right to payment of the balance the customer would have against the bank or building society if the transfers had not happened.

(3) The reference in subsection (1) to an account that a person holds is to be read as including an account held by a deceased individual immediately before his or her death.

In such a case, a reference in subsection (2) to the customer is to be read as a reference to the person to whom the right to payment of the balance has passed.

(4) In subsection (1) "agreed proportion" means a proportion agreed between the bank or building society and the reclaim fund.

In agreeing that proportion, the reclaim fund must take account of the need for the fund to have access at any given time to enough money to enable it to meet whatever repayment claims it is prudent to anticipate.

(5) For the purposes of this section—

(a) "repayment claim" means a claim made by virtue of subsection (2)(b);

(b) a "smaller" bank or building society is one that meets the assets-limit condition (see section 3);

(c) a charity has a "special connection" with a bank if (and only if) the purpose, or any of the main purposes, of the charity is to benefit members of communities that are local to the branches of the bank;

(d) a charity has a "special connection" with a building society if (and only if) the purpose, or any of the main purposes, of the charity—

(i) is to benefit members of communities that are local to the branches of the building society, or

(ii) is especially consonant with any particular purposes that the building society has.

(6) The reference in subsection (5)(d)(ii) to particular purposes does not include the purpose mentioned in section 5(1)(a) of the Building Societies Act 1986 (c. 53) (making loans that are secured on residential property and substantially funded by members).

[[F2](7) A transfer of an amount to an authorised reclaim fund and to one or more charities as mentioned in subsection (1) does not itself—

(a) constitute a breach of trust or fiduciary duty affecting the amount owing, or

(b) give rise to any other liability of any kind (whether against the transferring bank or building society, the reclaim fund, any charity concerned or any other person involved), other than the liability of the reclaim fund arising under subsection (2)(b).**]**

Textual Amendments

F2 S. 2(7) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 7(1)** (with Sch. 1 para. 7(2)); S.I. 2022/582, reg. 2

Modifications etc. (not altering text)

C3 S. 2 applied (6.6.2022) by 1992 c. 12, **s. 26A(2)(b)** (as substituted by Finance Act 2022 (c. 3), Sch. 6 paras. 1, **6**; S.I. 2022/569, **reg. 2**)

C4 S. 2 applied (6.6.2022) by 2008 c. 9, **s. 39(2)(b)** (as substituted by Finance Act 2022 (c. 3), Sch. 6 paras. 2, **6**; S.I. 2022/569, **reg. 2**)

Commencement Information

I2 S. 2 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Changes to legislation: *There are currently no known outstanding effects for the Dormant Bank and Building Society Accounts Act 2008, Part 1. (See end of Document for details)*

[F3 2A Return of surplus alternative scheme assets

(1) This section applies where an authorised reclaim fund has determined that a proportion of its alternative scheme assets does not need to be retained for the purposes of achieving any of its objects other than the transfer of money to the body or bodies for the time being specified in section 16(1).

(2) For the purposes of this section the reclaim fund's "alternative scheme assets" are the money and other assets which are—

(a) held by the reclaim fund, and

(b) derived from amounts transferred to it by virtue of section 2 ("section 2 transfers").

(3) Where this section applies the reclaim fund must take the following steps.

(4) Step 1 is to determine the amount corresponding to the proportion of its alternative scheme assets that does not need to be retained.

(5) Step 2 is to allocate a share of that amount to each bank or building society that has made section 2 transfers.

The allocation is to be made in the way the reclaim fund considers appropriate, having regard to the amounts transferred by each bank or building society.

(6) Step 3 is to transfer the allocated share to each bank or building society concerned, unless it has—

(a) refused consent to the transfer, or

(b) notified the reclaim fund that it does not wish to receive payments by virtue of this section (and the notice has not been withdrawn).

(7) Step 4, in the case of a share not transferred under step 3, is to transfer a corresponding amount to the body or bodies for the time being specified in section 16(1).

(8) A bank or building society receiving a payment by virtue of this section must transfer the same amount to one or more eligible charities (with the consent of the charity, or each charity, concerned).

(9) For the purpose of subsection (8) an "eligible charity" is one which—

(a) is considered to have a special connection with the bank or building society which originally made the section 2 transfers by reference to which the payment relates, or

(b) has undertaken to apply the money in question for the benefit of members of communities that are local to the branches of that bank or building society.

(10) In subsection (9) "special connection" is to be interpreted in accordance with section 2(5)(c) and (d) and (6).]

Textual Amendments

F3 S. 2A inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), **ss. 20**, 34(3); S.I. 2022/582, reg. 2

3 The assets-limit condition

(1) A bank or building society meets the assets-limit condition if the aggregate of the amounts shown in its balance sheet as assets on the last day of the latest financial year for which it has prepared accounts is less than £7,000 million.

(2) In relation to a bank or building society that was a member of a group on the day referred to in subsection (1), that subsection has effect as if the aggregate of the amounts shown in its balance sheet as assets on that day also included the aggregate of the amounts shown in each group member's balance sheet as assets—

(a) on that day, or

(b) (in the case of a group member whose financial year did not end on that day) on the last day of its latest financial year to end before that day.

(3) Where a balance sheet for a particular day shows amounts in a currency other than sterling, for the purposes of this section the amounts are to be converted into sterling at the London closing exchange rate for that currency and that day.

(4) The Treasury may by order amend the figure in subsection (1).

(5) An order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I3 S. 3 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Shareholding members of building societies

4 Effect of balance transfer on membership rights

(1) This section applies where a person ("the member") holds a share in a building society represented by an account with the society, and either—

(a) a transfer is made to a reclaim fund with the result that section 1 applies in relation to the account, or

(b) transfers are made to a reclaim fund and one or more charities with the result that section 2 applies in relation to the account.

(2) After the transfer or transfers the member is to be treated as having whatever share in the building society the member would have if the transfer or transfers had not happened (and accordingly as having whatever rights, including distribution rights, a holder of that share would have as such).

(3) In subsection (2) "distribution rights" means rights to any distribution arising as mentioned in section 96 (amalgamation or transfer of engagements) or 100 (transfer of business) of the Building Societies Act 1986.

(4) Subsection (2) ceases to apply where the balance of the account is paid out following a claim made by virtue of section 1(2)(b) or 2(2)(b).

(5) But where the balance of the account is paid out following such a claim and, as soon as reasonably practical, the money is—

(a) paid back into the account, or

Changes to legislation: *There are currently no known outstanding effects for the Dormant Bank and Building Society Accounts Act 2008, Part 1. (See end of Document for details)*

(b) paid into another share account with the building society in the member's name,

subsection (2) continues to apply until the account is credited with the money.

(6) Where, after the transfer or transfers referred to in subsection (1), the building society is succeeded by another building society as a result of an amalgamation or transfer of engagements, a reference in subsection (2) or (5) to the building society is to be read, in relation to any time after the amalgamation or transfer of engagements, as a reference to the successor building society (or to the successor building society of the successor, in relation to any time after a subsequent amalgamation or transfer; and so on).

Commencement Information

I4 S. 4 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Reclaim funds

5 Functions etc of a reclaim fund

(1) A "reclaim fund" is a company the objects of which are restricted by its articles of association to the following—

(a) the meeting of repayment claims;

(b) the management of **[**[F4]dormant assets funds**]** in such a way as to enable the company to meet whatever repayment claims it is prudent to anticipate;

(c) the transfer of money **[**[F5](other than money subject to paragraph (ca) or (cb))**]** to the body or bodies for the time being specified in section 16(1), subject to the need for the company—

(i) to have access at any given time to enough money to meet whatever repayment claims it is prudent to anticipate,

(ii) to comply with any requirement with regard to its financial resources that is imposed on it by or under any enactment, and

(iii) to defray its expenses;

[[F6](ca) the transfer to the body or bodies for the time being specified in section 16(1) of money derived from amounts transferred to the company by virtue of section 21(2)(b) of the Dormant Assets Act 2022, except in so far as any of it is needed for the purpose mentioned in paragraph (c)(ii) or (iii);

(cb) the transfer of money in accordance with section 2A(6) or (7);**]**

(d) objects that are incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of **[**[F7]dormant assets funds**]**).

(2) Schedule 1 makes further provision about provision that must be made in the articles of association of a reclaim fund.

(3) An alteration by a reclaim fund of its articles of association is ineffective if it would result in—

(a) the company ceasing to have objects restricted to those mentioned in subsection (1);

(b) the company's articles of association not containing any provision that they are required to make under Schedule 1.

(4) The Treasury may give a direction to a reclaim fund requiring it—

(a) to give effect to any specified object that it has, or

(b) to comply with any specified obligation or prohibition imposed on it by a provision that its articles of association are required to make under Schedule 1.

"Specified" means specified in the direction.

(5) The Treasury shall lay before Parliament a copy of any direction given under subsection (4).

(6) In this section—

"company" has the meaning given by section 1(1) of the Companies Act 2006 (c. 46);

[[F8]" dormant assets funds " means money transferred to a reclaim fund by virtue of section 1(1)(a) or 2(1)(a) above or section 2(1)(a), 5(1)(a), 8(1)(a), 12(1)(a) or 14(1)(a) of the Dormant Assets Act 2022 (and includes money or other assets derived from money so transferred);**]**

"repayment claims" means claims made by virtue of section 1(2)(b) or 2(2)(b) **[**[F9]above or section 2(2)(b), 5(2)(b) or (3)(b), 8(2)(b), 12(2)(b) or 14(2)(b) of the Dormant Assets Act 2022.**]**

Textual Amendments

F4 Words in s. 5(1)(b) substituted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(2)(a)**; S.I. 2022/582, reg. 2

F5 Words in s. 5(1)(c) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(2)(b)**; S.I. 2022/582, reg. 2

F6 S. 5(1)(ca)(cb) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(2)(c)**; S.I. 2022/582, reg. 2

F7 Words in s. 5(1)(d) substituted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(2)(d)**; S.I. 2022/582, reg. 2

F8 Words in s. 5(6) substituted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(3)(a)**; S.I. 2022/582, reg. 2

F9 Words in s. 5(6) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 8(3)(b)**; S.I. 2022/582, reg. 2

Commencement Information

I5 S. 5 in force at 12.3.2009 by S.I. 2009/490, **art. 2** (with art. 3)

Interpretation etc

6 Interpretation of Part 1

In this Part—

"account" has the meaning given by section 9;

[F10] …

"balance" has the meaning given by section 8;

"bank" has the meaning given by section 7;

"building society" means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986 (c. 53);

Changes to legislation: *There are currently no known outstanding effects for the Dormant Bank and Building Society Accounts Act 2008, Part 1. (See end of Document for details)*

"charity" means a body, or the trustees of a trust, established for charitable purposes only;

"dormant **[**[F11](except in the term "dormant assets funds")**]**" has the meaning given by section 10;

"financial year"—

(a) in relation to a company (other than a building society) within the meaning of the Companies Act 2006, has the meaning given in section 390(1) to (3) of that Act;

(b) in relation to an undertaking that is not a company within the meaning of that Act (and is not a building society), has the meaning given in section 390(4) of that Act;

(c) in relation to a building society, has the meaning given in section 117 of the Building Societies Act 1986;

"group" means a parent undertaking and its subsidiary undertakings;

"parent undertaking" and "subsidiary undertaking" have the same meaning as in the Companies Act 2006 (see section 1162 of that Act);

"reclaim fund" has the meaning given by section 5(1).

[[F12]"transfers", in relation to the balance of a dormant account, includes bringing about the transfer of the balance.**]**

Textual Amendments

F10 Word in s. 6 omitted (6.6.2022) by virtue of Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 9(a)**; S.I. 2022/582, reg. 2

F11 Words in s. 6 inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 9(b)**; S.I. 2022/582, reg. 2

F12 Words in s. 6 inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 9(c)**; S.I. 2022/582, reg. 2

Commencement Information

I6 S. 6 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

7 "Bank"

(1) Subject to subsection (4), "bank" means an authorised deposit-taker that has its head office, or one or more branches, in the United Kingdom.

(2) In subsection (1) "authorised deposit-taker" means—

(a) a person who under **[**[F13]Part 4A**]** of FSMA 2000 has permission to accept deposits;

[F14](b) . . . . . .

(3) A reference in subsection (2) to a person [F15]... with permission to accept deposits does not include a person [F15]... with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.

(4) "Bank" does not include—

(a) a building society;

(b) a person who is specified, or is within a class of persons specified, by an order under section 38 of FSMA 2000 (exemption orders);

(c) a credit union;

(d) a friendly society.

(5) In this section—

[F16"credit union" means a credit union within the meaning of section 31(1) of the Credit Unions Act 1979 or a credit union within the meaning of Article 2(2) of the Credit Unions (Northern Ireland) Order 1985;]

"friendly society" has the same meaning as in the Friendly Societies Act 1992 (c. 40) (see section 116 of that Act);

"FSMA 2000" means the Financial Services and Markets Act 2000 (c. 8).

Textual Amendments

F13 Words in s. 7(2)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 128** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F14 S. 7(2)(b) omitted (31.12.2020) by virtue of The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), reg. 1(3), **Sch. para. 40(a)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)

F15 Words in s. 7(3) omitted (31.12.2020) by virtue of The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), reg. 1(3), **Sch. para. 40(b)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)

F16 Words in s. 7(5) substituted (31.3.2012) by The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 (S.I. 2011/2832), arts. 2(c), **12(1)**

Commencement Information

I7 S. 7 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

8 "Balance"

(1) The balance of a person's account at any particular time is the amount owing to the person in respect of the account at that time, after the appropriate adjustments have been made for such things as interest due and fees and charges payable.

(2) In relation to a time after a transfer has been made as mentioned in section 1(1) or transfers have been made as mentioned in section 2(1), the adjustments referred to in subsection (1) above include those that would fall to be made but for the transfer or transfers.

Commencement Information

I8 S. 8 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

9 "Account"

(1) "Account" means an account that has at all times consisted only of money.

(2) A reference in this Part to an account held with a bank or building society is to an account provided by the bank or building society as part of its activity of accepting deposits.

(3) In relation to a building society, "account" includes an account representing shares in the society, other than—
  (a) preferential shares, or
  (b) deferred shares within the meaning given in section 119(1) of the Building Societies Act 1986 (c. 53).

Commencement Information
I9 S. 9 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

10 "Dormant"

(1) An account is "dormant" at a particular time if—
  (a) the account has been open throughout the period of 15 years ending at that time, but
  (b) during that period no transactions have been carried out in relation to the account by or on the instructions of the holder of the account.

(2) But an account is to be treated as not dormant if at any time during that period—
  (a) the bank or building society in question was under instructions from the holder of the account not to communicate with that person about the account, or
  (b) under the terms of the account—
    (i) withdrawals were prevented, or
    (ii) there was a penalty or other disincentive for making withdrawals in all circumstances.

(3) For the purposes of subsection (1) an account is to be treated as remaining open where it is closed otherwise than on the instructions of the holder of the account.

(4) For the purposes of subsection (2)(b)(i) withdrawals are prevented if they are prevented except as permitted by provision made under subsection (4)(d) of section 3 of the Child Trust Funds Act 2004 (c. 6) (requirements to be satisfied by child trust funds).

(5) The Treasury may by order amend the figure in subsection (1)(a).

(6) An order under this section may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

Commencement Information
I10 S. 10 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Supplemental

[F17]11 Customer's rights preserved on insolvency etc of bank or building society

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Textual Amendments

F17 S. 11 repealed (6.6.2022) by Dormant Assets Act 2022 (c. 5), **ss. 32(1)**, 34(3) (with s. 32(2)); S.I. 2022/582, reg. 2

[F18]12 Disclosure of information

. . . . . .

Textual Amendments

F18 S. 12 repealed (6.6.2022) by Dormant Assets Act 2022 (c. 5), **ss. 32(1)**, 34(3); S.I. 2022/582, reg. 2

13 Banks making transfers under section 2: information in directors' reports

(1) Where—

(a) the directors of a company that is a bank are required by section 415(1) of the Companies Act 2006 (c. 46) to prepare a report for a particular financial year, and

(b) in that year the company made transfers in relation to which section 2 applied **[**[F19]or a transfer required by section 2A(8)**]**,

the report must identify each of the charities concerned and specify the amount transferred to each of them.

(2) The requirements of subsection (1) are to be treated for the purposes of the Companies Act 2006 (c. 46) as requirements of that Act.

Textual Amendments

F19 Words in s. 13(1)(b) inserted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 10**; S.I. 2022/582, reg. 2

Commencement Information

I11 S. 13 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

[F20]14 Review and report to Parliament

. . . . . .

Textual Amendments

F20 S. 14 repealed (6.6.2022) by Dormant Assets Act 2022 (c. 5), **ss. 32(1)**, 34(3); S.I. 2022/582, reg. 2

Amendments

15 Amendments to the Financial Services and Markets Act 2000

The Financial Services and Markets Act 2000 is amended as set out in Schedule 2.

Commencement Information

I12 S. 15 in force at 12.3.2009 by S.I. 2009/490, **art. 2**

Changes to legislation:
There are currently no known outstanding effects for the Dormant Bank and Building Society Accounts Act 2008, Part 1.