These notes refer to the Saving Gateway Accounts Act 2009 (c.8) which received Royal Assent on 2 July 2009

SAVING GATEWAY ACCOUNTS ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Saving Gateway Accounts Act, which received Royal Assent on 2 July 2009. They have been prepared by HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. In the 2008 Budget, the Government announced that the Saving Gateway, a cash saving scheme for working age people on lower incomes, would be introduced nationally.

4. The Government consulted formally on the principle of the Saving Gateway in *Saving and Assets for All*[1], published in April 2001. The Saving Gateway was piloted twice between 2002 and 2007 and evaluations of these pilots[2], as well as further research on participants in the second pilot[3], have been published. The Government also published *The Saving Gateway: operating a national scheme*[4], in March 2008. This consultation document set out proposals for introducing the Saving Gateway nationally. A summary of responses to this consultation[5], was published in December 2008. All of these documents are available from the Treasury website[6].

5. The policy intention of the Saving Gateway is to:

   - promote a saving habit among working age people on lower incomes by providing an incentive to save through a government contribution for each pound saved; and

   - promote financial inclusion by encouraging people to engage with mainstream financial services.

6. Eligibility for Saving Gateway accounts is ‘passported’ from certain ‘qualifying’ benefits and tax credits. Eligible people may open accounts with financial institutions that have been approved to offer Saving Gateway accounts by Her Majesty’s Revenue and Customs (HMRC). Saving Gateway accounts will be of a fixed duration. At the end of the account’s duration the Government will make a contribution for each pound saved.

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1 *The Modernisation of Britain’s Tax and Benefit System, Number 8* (HM Treasury, 2001)
2 *Incentives to save: Encouraging saving among low-income households,* Kempson, McKay, Collard (Personal Finance Research Centre, University of Bristol, March 2005); *Final Evaluation of the Saving Gateway 2 Pilot,* Harvey, Pettigrew, Madden, Emmerson, Tetlow, Wakefield (Ipsos MORI and Institute for Fiscal Studies, May 2007).
3 *Saving Gateway – Following up the second Saving Gateway pilot participants,* (Ipsos MORI, Social Research Institute, June 2009)
4 *The Saving Gateway: operating a national scheme* (HM Treasury and HM Revenue and Customs, 2008).
5 The *Saving Gateway: operating a national scheme, Summary of Responses* (HM Treasury and HM Revenue and Customs, 2008)
6 www.hm-treasury.gov.uk/saving_gateway.htm

7. This Act sets out conditions for eligibility for the Saving Gateway. It imposes a duty on HMRC to issue notices to those people who are eligible for the Saving Gateway, and to pay any government contribution (a "maturity payment" or "death payment") that is due under the scheme. Details of the requirements for providers and of the operation of accounts will be set out in regulations. The Act contains additional provisions covering such matters as tax relief, the use of information, a requirement for review of the effect of the Saving Gateway, penalties, and arrangements for appeals against decisions taken by HMRC.

8. The Act has 33 sections.

TERRITORIAL EXTENT

9. The provisions of the Act extend to the whole of the United Kingdom.

10. Section 18 of the Act, which concerns the disclosure of information, confers functions on Northern Ireland departments and, as such, requires the consent of the Northern Ireland Assembly. Section 27 of the Act, which amends Schedule 2 to the Northern Ireland Act 1998 to add Saving Gateway accounts to the list of Excepted Matters set out in that Schedule, also requires the consent of the Northern Ireland Assembly in accordance with the principles set out in the Memorandum of Understanding between the Government and the Assembly. A Legislative Consent Motion has been obtained for these matters.

COMMENTARY

Section 1 Saving Gateway accounts

11. This section defines what is meant by a "Saving Gateway account" for the purposes of the Act.

12. *Subsection (1)* sets out four characteristics of a Saving Gateway account:

- that it is held by a person who has received a notice of eligibility and who was eligible at the relevant date (which is defined in *subsection (3)*). Notices of eligibility will be issued by HMRC under the powers given in section 2;
- that the account satisfies requirements imposed by or under the Act;
- that the account has been properly opened; and
- that the account has not ceased to be a Saving Gateway account. The circumstances in which an account ceases to be a Saving Gateway account will be set out in regulations made under section 10.

13. *Subsection (2)* states that Saving Gateway accounts are under the management of the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners"). The conferring of a managerial discretion on the Commissioners is a standard feature of HMRC legislation, and that of its predecessor departments, the Inland Revenue and HM Customs and Excise.

14. In older fiscal legislation, the managerial discretion conferred on HMRC's predecessor departments has been denoted by the term "care and management". This Act uses the more modern term of "management". The use of the term "management" is not intended to introduce a concept different from that found in older legislation.

15. *Subsection (3)* defines the "relevant date" for the purposes of *subsection 1(a)*. The relevant date is either the date on which a notice of eligibility is issued, or, if a person has ceased to be eligible on that date, the Commissioners may determine that an earlier date is to be treated as the relevant date under *subsection (3)(b)*.

16. This is intended to provide for situations where a person's claim to one of the benefits or tax credits listed in section 3(2) ends before HMRC issues the notice of eligibility. HMRC will receive information concerning eligibility on a periodic basis from the Department for Work and Pensions (DWP) and the Department for Social Development (DSD). There might be instances in which a person's claim to benefit ceases before DWP or DSD notify HMRC of that person's entitlement, or between this notification and the issue of a notice of eligibility by HMRC.

Section 2 ***Notices of eligibility***

17. *Subsection (1)* requires the Commissioners to issue a notice of eligibility to each person who is eligible for a Saving Gateway account. Eligibility is defined by section 3, which is described below.

18. *Subsection (2)* provides that the notice must include an expiry date. It also enables the Treasury to specify in regulations what other information is to be contained in the notice, and the way in which the notice is to be issued.

19. *Subsection (3)* enables regulations to be made allowing the Commissioners to issue a further notice of eligibility to an eligible person, where the expiry date of a previously-issued notice has passed.

Section 3 ***Eligible persons***

20. This section sets out when an individual is an eligible person for the purposes of this Act. Individuals who are entitled to certain qualifying benefits will automatically be issued with a notice of eligibility, as will those individuals who are entitled to certain tax credits and satisfy further conditions to be set out in regulations. Section 3 specifies the qualifying benefits and tax credits, sets out a further eligibility condition for individuals who are entitled to a carer's allowance, and makes provision for further conditions relating to eligibility to be set out in regulations.

21. *Subsection (1*) specifies two conditions that a person must satisfy in order to be an eligible person. *Subsection (1)(a)* provides that, to be eligible, a person must be entitled to one or more of the benefits or tax credits listed in *subsection (2). Subsection (1)(b)* sets out that an eligible person must also have a connection with the United Kingdom of a kind set out in regulations. The Government intends to provide in regulations that to be eligible for a Saving Gateway account, a person must be 'ordinarily resident' in the United Kingdom, or must be treated as such under rules set down within regulations.

22. *Subsection (2)* lists the qualifying benefits and tax credits. In order to be eligible for the Saving Gateway, a person must be entitled to one or more of these benefits or tax credits. The qualifying benefits and tax credits are:

- income support;
- employment and support allowance;
- jobseeker's allowance;
- incapacity benefit;
- severe disablement allowance;
- a carer's allowance (subject to the conditions set out in *subsection (4)*);
- child tax credit (subject to regulations made under *subsection (5)*); and
- working tax credit (subject to regulations made under *subsection (5)*).

23. For jobseeker's allowance and employment and support allowance, both income-based and contribution-based entitlement will lead to eligibility for the Saving Gateway.

24. *Subsection (3)* sets out that where a claim is made to a qualifying benefit or tax credit by two people, such as would happen, for example, where a joint claim to child tax credit is made, both parties to the claim may be eligible for a Saving Gateway account.

25. *Subsection (4)* imposes further conditions that must be met in order for entitlement to a carer's allowance to lead to eligibility for the Saving Gateway. The effect of this subsection is that those people with an underlying entitlement to a carer's allowance, to whom the allowance is not payable under the overlapping benefits rules set out in regulations made under section 73 of the Social Security Administration Act 1992[7], will not be eligible for a Saving Gateway account by virtue of that entitlement. Such people may however be eligible for the Saving Gateway if they are entitled to one or more of the other qualifying benefits or tax credits listed at *subsection (2)*.

26. *Subsections (5) and (6)* provide for regulations to be made limiting the circumstances in which a person entitled to child tax credit or working tax credit is eligible for a Saving Gateway account. Regulations made under these subsections may include the imposition of an income threshold above which tax credit recipients are not eligible for Saving Gateway accounts, or provisions in relation to individuals whose entitlement to tax credits arises because they are also entitled to a prescribed social security benefit. Regulations made under *subsection (5)* may make provision similar to any provision of the Tax Credits Act 2002[8] or to any regulations made under that Act, with or without modifications. The Government intends to impose an annual income threshold, above which tax credit recipients are not eligible for Saving Gateway accounts, and to align this with the child tax credit threshold which, for the tax year 2009-10, has been set at £16,040.

27. *Subsection (7)* enables the list of qualifying benefits and tax credits set out in *subsection (2)* to be amended by order.

28. *Subsection (8)* enables an order under *subsection (7)* to make consequential amendments to section 3.

Section 4 Requirements relating to accounts

29. Section 4 contains requirements relating to accounts, and gives the Treasury power to make regulations imposing requirements with which an account must comply to be a Saving Gateway account.

30. *Subsection (1)* sets out the requirement that providers of Saving Gateway accounts must be approved by the Commissioners in accordance with regulations. Saving Gateway accounts may only be offered by approved account providers.

31. *Subsection (2)* specifies conditions that an account must meet in order to be a Saving Gateway account. *Subsection (2)(a)* provides for regulations to prescribe the maturity period for Saving Gateway accounts, and also provides that an account is not a Saving Gateway account unless, under its terms, the account holder is entitled to a "maturity payment" at the end of this maturity period. The maturity payment is the government contribution paid at the end of the account, and is calculated according to the rules set out in section 8.

32. *Subsection (2)(b)* provides that an account is not a Saving Gateway account unless, under its terms, the personal representatives of the account holder are entitled to a payment (a "death payment") in the event of the account holder dying before the end of the account. Regulations made under this section will specify how the death payment is to be calculated and the period within which it is payable by the account provider.

33. *Subsection (2)(c)* provides that an account is not a Saving Gateway account unless it complies with any additional requirements imposed by regulations.

7 (c. 4). See the Social Security (Overlapping Benefits) Regulations 1979 (S.I. 1979/597, as amended)
8 (c.21)

34. *Subsection (3)* prevents regulations made under *subsection (2)(a)* from prescribing a maturity period of less than 12 months. The Government intends to set the maturity period for Saving Gateway accounts at 24 months.

35. *Subsection (4)* specifies that the Treasury may make regulations under *subsection (2)(c)* imposing a limit on the amount which may be paid into a Saving Gateway account during a month. This limit does not apply to interest or other sums paid by the approved account provider under the terms of the account. The Government has announced that it intends to set a limit of £25 on the amount which may be paid into a Saving Gateway account during a month.

36. *Subsection (5)* defines "month" for the purposes of this section. The effect of this subsection is to ensure that the deposit limit set under the regulation-making power in *subsection (4)*, and the maturity period specified in regulations made under *subsection (2)(a)*, relate to calendar months, apart from the first month of the account's duration. The first month of the account duration runs from the day on which the account is opened to the end of the calendar month in which it is opened, and might therefore be less than a full calendar month.

Section 5 Approvals

37. Section 5 relates to the approval of account providers by HMRC.

38. *Subsection (1)* provides that regulations made by the Treasury under section 4(1) may include provisions enabling the Commissioners to impose conditions on an approved account provider, and to withdraw approval to offer Saving Gateway accounts.

39. *Subsection (2)* enables regulations to impose certain information requirements on providers whose approval to offer Saving Gateway accounts has been, or is to be, withdrawn. The details of the process to be followed in such circumstances will be set out in regulations but may , for example, include a requirement that such account providers notify account holders of the right to transfer their account to another account provider.

Section 6 Account opening

40. Section 6 relates to the opening of accounts and gives the Treasury power to make regulations in relation to the opening and holding of accounts.

41. *Subsection (1)* states that a person who receives a notice of eligibility may apply to open a Saving Gateway account with an approved account provider.

42. Section 2(2)(a) of the Act, as described above, provides that a notice of eligibility will contain an expiry date. *Subsection (2)(a)* of section 6 specifies that an application to open an account must be made and accepted by the account provider no later than this expiry date. *Subsections (2)(b) and (2)(c)* provide that the application must also include a true declaration as prescribed in regulations, and must be made in accordance with regulations. Where an incorrect declaration is made, or an application for an account otherwise breaches the requirements of *subsection (2)*, section 1(1)(c) of the Act, as described above, provides that the account will not be a Saving Gateway account. Where an incorrect declaration is made deliberately by a person seeking to open a Saving Gateway account, a penalty may also be charged under section 19(1), as described below.

43. Where an application meets the requirements of this section, the account provider is obliged to open a Saving Gateway account under *subsection (3)*.

44. *Subsection (4)* provides that exceptions to this obligation to open an account may be set out in regulations. These exceptions may, for example, include situations in which an account provider believes that a notice of eligibility might not be genuine, or that

the applicant may have provided incorrect information as part of their application to open an account.

45. *Subsection (5)* allows the Treasury to make regulations in relation to the holding and opening of Saving Gateway accounts. Regulations may prevent a person holding more than one Saving Gateway account at the same time; may specify a period after the end of a Saving Gateway account during which a person may not open another Saving Gateway account; and may prevent a person from opening more than a specified number of accounts in their lifetime, or from holding more than a specified number of Saving Gateway accounts until the end of their maturity periods. The Government intends to provide in regulations that no person may hold more than one Saving Gateway account during their lifetime, except in cases where an account has been closed within any 'cooling-off period' offered by the account provider.

Section 7 Transfers

46. Section 7 enables the Treasury to make regulations regarding the transfer of accounts from one account provider to another. The circumstances in which accounts may be transferred between providers, and the detail of the account transfer procedure, will be set out in regulations. The Government intends to provide in regulations that an account provider will only be required to offer account holders the right to transfer Saving Gateway accounts in circumstances where the account provider is not permitted, not willing, or otherwise not able, to offer the account to the end of its maturity period. Account providers may, however, also choose to offer account transfers in other circumstances.

Section 8 Maturity payments

47. Section 8 specifies how the maturity payment payable at the end of the account's maturity period is calculated. The maturity payment is the government contribution made at the end of a Saving Gateway account.

48. *Subsection (1)* contains the method for calculating this payment, which is by multiplying the number of whole pounds in the qualifying balance of an account at the end of the maturity period ("A") by an amount in pence to be specified in regulations ("B").

49. The Government has announced that the amount to be specified in regulations will be 50 pence, meaning that the government contribution will be calculated at the rate of 50 pence for every whole pound in the qualifying balance of a Saving Gateway account at the end of its maturity period.

50. *Subsection (2)* provides that the qualifying balance of a Saving Gateway account is the highest balance achieved during the maturity period.

51. *Subsection (3)* provides that two sums are to be disregarded when calculating the qualifying balance. *Subsection (3)(a)* sets out that interest or other sums credited to the account by the account provider are to be disregarded. *Subsection (3)(b)* sets out that any amounts paid in breach of the limit on deposits specified in regulations under section 4(4), as described above, are also to be disregarded.

52. Worked examples are given below to illustrate how these rules operate in different cases. All figures, including any amounts of interest cited, are purely illustrative, although these examples do reflect certain account features and characteristics previously announced by the Government. As described above, the Government has announced that it intends to provide in regulations that the maximum amount that may be paid into a Saving Gateway account in any month will be £25, and that the maturity period for Saving Gateway accounts will 24 months. The Government has also announced that there will be no requirement upon account providers to offer interest or dividends on accounts.

53. *Example 1*: An account holder deposits £10 per month for 24 months and makes no withdrawals. The account provider does not offer interest on Saving Gateway accounts. The closing balance is £240, made up of 24 monthly payments of £10. The qualifying balance in this example would be £240, and the maturity payment would therefore be 240 x 50p = £120.

54. *Example 2*: An account holder deposits £25 per month for 24 months and makes no withdrawals. The account provider offers interest on Saving Gateway accounts and £2 of interest is credited to the account at the end of month 12, with a further £3 of interest credited at the end of month 24. This gives a closing balance on the account of £605, made up of 24 monthly payments of £25 and £5 of interest. The qualifying balance in this example would be £600, as the interest payments would be disregarded under *subsection (3)(a)*. The maturity payment would therefore be 600 x 50p = £300.

55. *Example 3*: An account holder deposits £10 per month in the first 11 months of the maturity period but makes a deposit of £50 in month 12, in breach of the limit on monthly deposits to be specified in regulations under section 4(4). The account holder continues to deposit £10 a month in each of the remaining 12 months of the account. No withdrawals are made. The account provider offers interest on Saving Gateway accounts, and interest of £2 is credited at the end of month 12, with a further £2 of interest credited at the end of month 24.

56. The closing balance of the account is £284, made up of 23 monthly deposits of £10, a deposit of £50 in month 12, and £4 of interest. In this case the qualifying balance would be £255, as interest payments of £4 and the £25 excess deposit in month 12 would be disregarded under *subsections (3)(a)* and *(3)(b)* respectively. The maturity payment would therefore be 255 x 50p = £127.50. As detailed below, a penalty may also be imposed on the account provider under section 21(1)(d), for allowing the monthly deposit limit for the account to be breached during month 12.

57. *Example 4*: An account holder deposits £25 per month in the first 12 months of the account, withdraws £100 in month 12, and makes no further withdrawals or deposits. The account provider does not offer interest on Saving Gateway accounts. The closing balance of the account is £200. The qualifying balance of the account would be £300 as this is the highest balance achieved during the maturity period. The maturity payment would therefore be 300 x 50p = £150.

58. *Example 5*: An account holder deposits £25 per month for the first 12 months of the account and then withdraws £100 in month 12. The account holder makes deposits of £25 in each of the remaining 12 months of the maturity period. The account provider offers interest on Saving Gateway accounts, and interest payments of £2 are credited to the account at the end of month 12 and at the end of month 24.

59. The closing balance of the account is £504, which comprises 24 monthly deposits of £25 (£600), less the £100 withdrawal made in month 12, plus £4 of interest. The qualifying balance in this example would be £500, which is the highest balance achieved during the maturity period, once interest has been disregarded under *subsection (3)(a)*. The maturity payment would therefore be 500 x 50p = £250.

60. This example illustrates that where a withdrawal has been made, the account holder must ‘catch up’ to the previous highest balance before further deposits increase the qualifying balance of their account, and therefore the maturity payment due. In this example, the £25 deposits made between months 13 and 16 would enable the account holder to catch up to the previous highest balance of £300. Having caught up to the previous highest balance in month 16, deposits made in month 17 onwards would increase the qualifying balance of the account, and therefore the maturity payment.

61. *Subsection (4)* requires the maturity payment to be paid by the account provider to the account holder within a period of time, to be specified in regulations, after the end of the maturity period. The Government intends to provide in regulations that the maturity

payment must be made to the account holder within 21 days of the end of the maturity period for the account.

62. *Subsection (5)* provides that the account holder is not entitled to a maturity payment where an account is closed before the end of the maturity period.

Section 9 Statements etc.

63. Section 9 gives the Treasury power to make regulations concerning account statements to be issued by account providers.

64. *Subsection (1)* gives the Treasury the power to make regulations requiring account providers to send account statements to account holders. Regulations may specify the information that account statements must contain, and how often they are to be sent to account holders. The Government intends to provide in regulations that account statements containing specified information should be issued to account holders on a six-monthly basis, subject to certain exceptions in relation to accounts for which passbooks are provided.

65. *Subsection (2)* disapplies section 234A of the Income and Corporation Taxes Act 1988[9], so that there is no duty on account providers to supply information to account holders concerning the distribution of interest on a Saving Gateway account.

Section 10 Account ceasing to be Saving Gateway account

66. Section 10 gives the Treasury power to make regulations specifying when an account ceases to be a Saving Gateway account.

Section 11 Returns of information to HMRC

67. This section concerns the information to be provided to HMRC by persons who are, or were, approved account providers.

68. *Subsection (1)* provides that regulations may place a requirement on approved account providers, or persons who were approved account providers, to submit an information return to the Commissioners concerning Saving Gateway accounts, or former Saving Gateway accounts.

69. *Subsection (2)* provides that the regulations may specify the information to be included in a return; the form of a return; the period to which a return relates; and the period within which a return must be submitted to the Commissioners. *Subsection (2)(e)* provides that regulations may set out how a return is to be submitted, which may include a requirement that returns be made by electronic means under the provisions of section 135 of the Finance Act 2002[10], with or without modifications**.**

70. Section 135 of Finance Act 2002 provides authority for the Commissioners to make regulations requiring electronic communications to be used by specified persons to deliver specified information relating to a taxation matter. The regulations in Part 10 of the Income Tax (Pay As You Earn) Regulations 2003[11], which make Pay As You Earn online filing and payment mandatory for large employers, are made partly in exercise of the powers granted by section 135 of Finance Act 2002. As the powers conferred on the Commissioners by section 135 are limited to "taxation matters" they could not be used in relation to information returns on Saving Gateway accounts. Section 11(2)(e) therefore allows regulations to be made applying provisions made under section 135, with or without modifications, to Saving Gateway information returns.

71. S*ubsection (3)* sets out that regulations may provide for a return to include a claim by the approved account provider for payment of an amount equal to maturity payments due

9 (c.1)
10 (c.23)
11 The Income Tax (Pay As You Earn) Regulations 2003, SI 2003/2682

to account holders, and death payments due to the personal representatives of deceased account holders, as well as information about the calculation of this claim.

72. The Government intends to require in regulations that account providers must submit to HMRC a monthly return and claim containing specified information. This return and claim should be submitted by electronic means, within 14 days of the end of the month to which it relates.

73. *Subsection (4)* provides that the Commissioners must pay any amount claimed in accordance with regulations made under *subsection 3(a)* within a period to be specified in regulations. The Government intends to specify in regulations that this period will be 7 days from the due date for the claim, subject to any checking and correction of the claim that might be necessary.

Section 12 Recovery of payments by HMRC

74. This section enables regulations to be made concerning the recovery of payments made by HMRC.

75. *Subsection (1)* gives the Treasury power to make regulations requiring persons of a description to be specified in regulations to account for any sums paid by the Commissioners in relation to Saving Gateway accounts. Regulations made under this power may, for example, enable HMRC to recover any amounts that have been overpaid to an account provider in response to a claim made under section 11(3)(a).

76. *Subsection (2)* enables regulations to be made treating sums due to the Commissioners under this section as tax charged in an assessment, for the purposes of Part 6 of the Taxes Management Act 1970[12], which contains provisions relating to the collection and recovery of tax. Under these provisions, HMRC may issue formal demands for payment. Part 6 also makes provision for collection by distraint and for recovery through Court proceedings where a person refuses to pay an amount charged. Regulations made under this subsection may enable HMRC to collect sums to be recovered under section 12 in the same way as sums of tax due.

77. *Subsection (3)* enables regulations to prescribe time limits after which a person ceases to be required to account to the Commissioners for an amount paid under this Act. The Government intends to provide in regulations that these time limits will be aligned with those which apply to tax amounts due, as set out in the Taxes Management Act 1970.

Section 13 Interest

78. This section gives the Treasury power to make regulations concerning the charging and payment of interest on amounts due to, and payable by, the Commissioners.

79. *Subsection (1)* enables regulations to be made providing for interest to be charged by HMRC, in prescribed circumstances, on any amount payable to the Commissioners under this Act.

80. Regulations under *subsection (2)* may also provide for HMRC to pay interest where an amount claimed by an account provider under section 11(3)(a) is paid later than the due date set out in regulations.

81. *Subsection (3)* enables regulations to set the rate at which interest is to be paid, the way in which that rate is to be determined, and the period in respect of which interest is to be paid. Regulations may also provide that interest payable to the Commissioners is to be treated for the purposes of Part 6 of the Taxes Management Act 1970[13] as tax due under an assessment, enabling HMRC to collect these sums in the same way as tax due.

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12 (c.9)
13 (c.9)

Section 14 Relief from income tax and capital gains tax

82. Section 14 gives the Treasury power to make regulations giving relief from income tax and capital gains tax in respect of Saving Gateway accounts. The Government intends to provide in regulations that no tax will be chargeable on interest or other income (including maturity payments) received on, or in relation to, Saving Gateway accounts.

83. *Subsection (1)* provides that regulations may give relief from income tax and capital gains tax in respect of any payment made by an account provider to, or in relation to, a Saving Gateway account.

84. Under *subsection (2)*, regulations may be made disapplying or modifying the effect of income tax or capital gains tax legislation in relation to Saving Gateway accounts.

85. *Subsection (3)* enables regulations to include provision for appropriate restitution to be made to HMRC in circumstances prescribed in regulations. This will cover cases in which tax relief has been given where it was not due.

Section 15 Alternative finance arrangements

86. This section allows a Saving Gateway account to be treated as an "alternative finance arrangement" for the purposes of Chapter 5 of Part 2 of the Finance Act 2005[14]. For a deposit arrangement to come within section 49 of Finance Act 2005, the payments made to the depositor must come "out of any profit resulting from the use of the [deposited] money" and must equate in substance to the return on an investment of money at interest (under sections 49(1) (c) and (d)).

87. The maturity payment at the end of the Saving Gateway account, or a death payment following the death of the account holder, could be seen as breaching these conditions. This section provides that a Saving Gateway account that would otherwise be treated, by virtue of section 49 or 49A of Finance Act 2005, as an alternative finance arrangement but for a maturity payment or death payment, should not be disqualified because of such a payment. It will give certainty that regulations made under section 14 will apply to the tax treatment of an investment return paid on such an account as they do to interest. It will also give certainty of treatment in the provider's own corporation tax returns.

Section 16 Transfer of funds on account ceasing to be Saving Gateway account

88. This section enables the Treasury to make regulations permitting the transfer of funds from an account that has ceased to be a Saving Gateway account to an investment plan, such as an Individual Savings Account (ISA), of a kind to be prescribed in regulations.

89. *Subsection (2)* enables regulations to be made setting out circumstances in which funds in an account that has ceased to be a Saving Gateway account may be transferred to a prescribed investment plan. Regulations may also set out the procedure to be followed when such a transfer takes place.

90. Regulations under *subsection (3)* may permit an account holder, or a former account holder, to request a certificate from their account provider specifying prescribed information.

91. The Government intends to amend the ISA Regulations 1998[15] to allow the transfer of the closing balance of a Saving Gateway account, and the associated maturity payment, to an ISA. The Government intends that this transfer will be outside the normal annual subscription limits for ISAs, providing that it takes place within a specified time limit and is accompanied by a certificate issued in accordance with regulations made under *subsection (3)*.

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14 (c. 7)
15 The Individual Savings Account Regulations 1998, SI 1998/1870

Section 17 Information to be supplied by relevant persons

92. This section gives the Treasury power to make regulations under which HMRC may require certain information or documents to be provided or made available.

93. Under *subsection (1)*, regulations may require or authorise officers of HMRC to require that a "relevant person" makes documents available for inspection, or provides information or documents. *Subsection (2)* defines a relevant person as a person who is or has been an approved account provider; a person who has applied to open a Saving Gateway account; or a person who holds, or has held, a Saving Gateway account or a purported Saving Gateway account.

94. *Subsection (3)* provides that regulations may specify how, where, and when information or documents should be provided or made available.

Section 18 Disclosure of information

95. The information that is required to establish eligibility to the Saving Gateway will come from three sources. DWP (in England, Scotland and Wales), and DSD (in Northern Ireland), hold information relating to entitlement to qualifying benefits. HMRC already hold information relating to qualifying tax credits.

96. Under section 17(1) of the Commissioners for Revenue and Customs Act 2005[16], any information acquired by HMRC in connection with a function may be used by HMRC in connection with any other of its functions. This will enable HMRC to use tax credit information for purposes relating to the Saving Gateway, as both tax credits and the Saving Gateway are functions of HMRC.

97. Section 121F of the Social Security Administration Act 1992[17] permits information relating to qualifying benefits to be supplied to HMRC for certain specified purposes by the Secretary of State and DSD respectively. The Social Security Administration (Northern Ireland) Act 1992[18] contains similar provisions that are applicable in Northern Ireland.

98. *Subsections (1)* and *(2)* amend the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992 respectively to enable information held by DWP and DSD to be supplied to HMRC for the purposes of the Saving Gateway.

Section 19 Penalties: incorrect information

99. Sections 19, 20 and 21 make provision in relation to penalties.

100. Section 19 makes provision in relation to penalties that may be imposed where incorrect information is supplied to HMRC.

101. Under *subsection (1)*, the Commissioners have the power to impose a penalty of £300 on anyone who deliberately makes an incorrect declaration when applying to open a Saving Gateway account.

102. *Subsection (2)* permits the Commissioners to impose a penalty not exceeding £3,000 on a person who:

- deliberately or carelessly makes an incorrect statement or declaration in, or in connection with, a return made in accordance with regulations under section 11 (returns of information to HMRC); or

16 (c.11)
17 (c.5)
18 (c.8)

- deliberately or carelessly provides incorrect information in response to a requirement made in accordance with regulations under section 17 (information to be supplied by relevant persons).

103. *Subsection (3)* sets out that where a person provides information to HMRC, later discovers that the information provided was inaccurate and fails to take reasonable steps to inform HMRC of that inaccuracy, that person will be treated as having acted carelessly. A penalty may be imposed under *subsection (2)* in such circumstances.

Section 20 ***Penalties: failure to submit return etc.***

104. This section concerns penalties that may be imposed where a person fails to submit to HMRC a return or other information required by or under this Act.

105. Under *subsection (1)*, penalties may be imposed on:

- account providers who fail to submit a return to HMRC within the time set out in regulations made under section 11 (returns of information to HMRC); and
- a person who fails to provide a document or information to HMRC within the period set out in regulations made under section 17 (information to be supplied by relevant persons).

106. *Subsection (2)* sets this penalty at not more than £300 for the initial failure. In addition, daily penalties of not more than £60 may be imposed for each day that the failure continues after the first penalty has been imposed.

107. *Subsection (3)* ensures that no penalty will be charged under *subsection (1)* once the failure has been remedied.

108. Under *Subsection (4)*, a person will not be considered to have failed to make a timely claim, or to have failed to provide or make information available on time, if they have done so within any additional time offered by the Commissioners, or if they had a reasonable excuse for the delay. *Subsection (5)* lists matters which are and are not considered to be reasonable excuses for the purposes of *subsection (4)*.

Section 21 ***Penalties: non-compliance by account provider***

109. This section sets out the penalties that may be imposed on account providers who fail to comply with requirements imposed by or under this Act. Under *subsection (1)*, penalties may be imposed on an account provider who:

- offers or operates an account which purports to be a Saving Gateway account but does not comply with a requirement imposed by or under section 4;
- fails to make a maturity payment to an account holder within the period specified in regulations made under section 8(4);
- fails to make a death payment to the personal representatives of a deceased account holder within the period specified in regulations made under section 4(2)(b);
- allows an account holder to exceed the limit on payments into the account imposed by regulations made under section 4(4);
- fails to comply with a condition imposed by or under regulations made under section 5 (approvals);
- opens a purported Saving Gateway account for a person where the application for the account does not contain the declaration to be made by the account holder under section 6(2)(b), or does not comply with section 6(2)(c);

- fails to open an account for an account holder, in breach of the requirement to do so under section 6(3);
- opens an account for an account holder in breach of a requirement to refuse to open an account under regulations made under section 6(4); or
- fails to comply with any other requirement imposed in regulations made under section 7 (transfers) or section 9 (statements etc).

110. *Subsection (2)* sets the penalty under *subsection (1)* as not exceeding the greater of £300 or £1 in respect of each Saving Gateway account affected by the matter, or any of the matters, in respect of which the penalty is imposed.

111. *Subsection (3)* provides for a supplementary penalty to be imposed by HMRC where an earlier penalty under this section was based on an underestimate of the number of accounts affected.

Section 22 Decisions and notices

112. This section sets out various procedural matters relating to penalties imposed under section 19, 20 or 21.

113. *Subsection (1)* specifies that the decision to impose a penalty is that of the Commissioners.

114. *Subsection (2)* provides that a decision to impose a penalty must be made within 12 months of the "relevant date", as defined in *subsection (3)*. *Subsection (4)* defines what is meant by "the appeal period" when establishing the relevant date for a penalty under *subsection (3)(a)*. This is the penalty that may be imposed under section 19(1) on a person who deliberately makes an incorrect declaration when applying to open a Saving Gateway account.

115. *Subsection (5)* states that the Commissioners must give notice of their decision to impose a penalty to the person on whom the penalty is imposed.

116. *Subsection (6)* allows the Commissioners to use their discretion to reduce a penalty after the notice referred to in *subsection (5)* has been given.

117. *Subsection (7)* provides a 30-day time limit for payment of a penalty, beginning with the date on which the penalty notice was issued.

118. *Subsection (8)* specifies information that must be included on a penalty notice.

119. *Subsection (9)* enables penalties to be treated as tax charged in an assessment for the purposes of Part 6 of the Taxes Management Act 1970[19]. This will enable HMRC to collect sums charged by way of penalty in the same way as sums of tax due.

Section 23 Rights of appeal

120. This section sets out the circumstances in which appeals may be made against decisions made, or actions taken, by HMRC in relation to the Saving Gateway.

121. *Subsection (1)* provides a right of appeal against a decision made by the Commissioners:

- not to approve a person as an account provider under section 4(1);
- to withdraw approval to provide Saving Gateway accounts;
- not to pay an amount claimed by an account provider under regulations made under section 11(3);

19 (c.9)

- not to issue a notice of eligibility for a Saving Gateway account under section 2; and
- that an account is not a Saving Gateway account.

122. Under *Subsection (2),* a person who is required by the Commissioners under regulations made under section 12 (recovery of payments by HMRC) or section 14 (relief from income tax and capital gains tax) to account:

- for an amount previously paid by the Commissioners in relation to the Saving Gateway; or
- for tax, or an amount in respect of tax, in relation to an account

may appeal against this requirement.

123. *Subsection (3)* provides a right of appeal against the imposition by the Commissioners of any penalty under this Act.

124. *Subsection (4)* provides a right of appeal against the amount charged by the Commissioners by way of a penalty under this Act. This right of appeal applies to all penalties under this Act, other than the penalty at section 19(1) on a person who deliberately makes an incorrect declaration when applying to open a Saving Gateway account. For this penalty, the Act fixes the amount to be charged at £300. While a tribunal may set aside or confirm the decision to impose a penalty under section 19(1), it would not be open to a tribunal to reduce or increase the level of this penalty. A tribunal's powers in relation to appeals against the Commissioners' decision to impose a penalty are specified in section 25(3), as described below.

Section 24 ***Exercise of rights of appeal***

125. This section sets out various procedural matters relating to the exercise of a right of appeal under section 23.

126. *Subsection (1)* sets out the time limit within which an appeal should be notified to the Commissioners.

127. *Subsection (2)* specifies the content of a notice of appeal for tax appeals and Northern Ireland appeals (as defined in *subsection (3)*). All other notices of appeal will be subject to the relevant Tribunal Procedure Rules for the Social Entitlement Chamber of the First-tier Tribunal. .

128. *Subsections (4)* and (5) enable the Treasury to make regulations applying provisions of other enactments to appeals relating to Saving Gateway accounts. *Subsection (6)* enables the Treasury to alter the list of enactments in *subsection (5)* by order.

Section 25 ***Appeals: jurisdiction and powers***

129. This section sets out the jurisdiction and powers of the bodies that will hear appeals made under this Act.

130. The Tribunals, Courts and Enforcement Act 2007[20] came into force in July 2007, creating two new generic tribunals: the First-tier Tribunal and the Upper Tribunal. The work of each Tribunal is divided into "Chambers". Each Chamber comprises similar jurisdictions, or jurisdictions which bring together similar types of experts to hear appeals, and will operate under rules and procedures tailored to the needs of these jurisdictions.

131. Appeals in England, Scotland, Wales and Northern Ireland that relate to taxation matters will be heard by the Tax Chamber. All other appeals under this Act in England, Scotland and Wales will be heard by the Social Entitlement Chamber. Non-tax appeals

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20 (c.15)

in Northern Ireland will be subject to the arrangements applicable to social entitlement appeals in Northern Ireland.

132. *Subsection (1)* sets out which tribunal will hear appeals made under this Act.

133. Under *subsection (1)(a)*, all tax appeals in the UK, and all other appeals on Saving Gateway matters (social entitlement appeals) in England, Scotland and Wales, will be heard by the First-tier or Upper Tribunal, as determined by or under the Tribunal Procedure Rules. These rules are made by the Tribunal Procedure Committee, a body set up by the Tribunals, Courts and Enforcement Act 2007.

134. *Subsection (1)(b)* provides that non-tax appeals in Northern Ireland will be heard by an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998[21] ("the 1998 Order").

135. *Subsection (2)* sets out that on an appeal under section 23(1) or 23(2) (a non penalty related appeal), the tribunal may confirm or set aside a decision of the Commissioners in its entirety, or otherwise allow an appeal in part.

136. *Subsection (3)* sets out that on an appeal under section 23(3) or 23(4) (a penalty related appeal), the tribunal may confirm or set aside a decision of the Commissioners to impose a penalty, or in those cases where the penalty amount is not fixed in this Act, may confirm, reduce, or increase its amount as appropriate, subject to the permitted maximum.

137. Section 11(2) of the Tribunals, Courts and Enforcement Act 2007 provides for appeals against decisions of the First-tier Tribunal on points of law. *Subsection (4)* of section 25 provides that where the First-tier Tribunal has found a person to be liable for a penalty, that person may, in addition to any right of appeal under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, appeal that decision to the Upper Tribunal. On such an appeal the Upper Tribunal has a similar jurisdiction as conferred on the tribunal under *subsection (3)*. This has effect in England, Wales and Scotland. An equivalent provision for Northern Ireland is made in *subsection (6)*.

138. *Subsection (5)* specifies that decisions of an appeal tribunal in Northern Ireland on the Saving Gateway should be treated as if they were made under Articles 13 or 14 of the 1998 Order, for the purposes of Article 15 of that Order. The effect of this provision is that appeals on a point of law against Saving Gateway decisions made by an appeal tribunal in Northern Ireland will be to the Northern Ireland Social Security Commissioner.

139. *Subsection (6)* replicates the effect of *subsection (4)* in relation to penalty appeals in Northern Ireland. It provides that where an appeal tribunal in Northern Ireland has found a person to be liable for a penalty, that person may appeal that decision to the Northern Ireland Social Security Commissioner. On such an appeal the Northern Ireland Social Security Commissioner has a similar jurisdiction as conferred on the tribunal under *subsection (3)*.

140. *Subsection (7)* defines the Northern Ireland Social Security Commissioner for the purposes of this Act.

Section 26 Review and report to Parliament

141. This section provides that the Commissioners must make arrangements for an independent review of the Saving Gateway. *Subsection (1)* sets out the matters that will be considered by the review.

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21 S.I. 1998/1506 (N. I. 10)

142. S*ubsections (2)* and *(3)* set out arrangements for the review. They provide that the Commissioners must consult the Treasury before making the arrangements for the review, and must provide the results and conclusions of the review to the Treasury.

143. *Subsections (4)* and *(5)* require the Treasury to lay a report, setting out the results and conclusions of the review, before Parliament within seven years of section 6 (account opening) coming into force.

Section 27 Northern Ireland

144. This section inserts a reference to the Saving Gateway into Schedule 2 of the Northern Ireland Act 1998[22], making it an excepted matter for the purposes of the devolution settlement in Northern Ireland, and therefore outside the competence of the Northern Ireland Assembly.

Section 28 Orders and regulations

145. This section provides that the power to make an order or regulations under the Act is exercisable by the Treasury, and sets out the Parliamentary procedures that will apply.

146. Orders or regulations made under this Act must be laid before both Houses of Parliament. There is one exception to this: in accordance with the normal convention concerning tax matters, regulations made under section 14 (relief from income tax and capital gains tax) will be laid before the House of Commons only.

147. The first exercise of any power to make an order or regulations under the powers given by the Act will be subject to the affirmative procedure. The subsequent exercise of those powers will generally be subject to the negative procedure as the powers are considered to be largely administrative and technical in nature.

148. There are 8 exceptions to this. An order under section 3(7), which allows the Treasury to amend the list of qualifying benefits or tax credits, will always be subject to the affirmative procedure. In addition, regulations made:

- under section 3(1)(b), prescribing the kind of connection with the United Kingdom that a person must have in order to be an eligible person;
- under section 3(5), concerning the circumstances in which a person entitled to child tax credit or working tax credit may be eligible for a Saving Gateway account;
- under section 4(2)(a), setting the maturity period for accounts;
- under section 4(4), concerning the limit on amounts that may be paid into a Saving Gateway account within a month;
- under section 6(5), specifying the number of accounts that a person may hold at a time or during their lifetime, or specifying a period after the end of the maturity period of one Saving Gateway account during which the former account holder may not open another account; and
- under section 8(1), specifying the rate at which the government contribution is to be paid

will always be subject to the affirmative procedure.

149. An order under section 24(6), amending the list of enactments in section 24(5) which may be applied to an appeal made under section 23, will always be subject to the negative procedure.

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22 (c.47)

COMMENCEMENT

150. Sections 29 (money), 31 (commencement), 32 (extent), and 33 (short title) will come into force on Royal Assent. A Treasury order (or orders) will be made setting out when the rest of the Act will come into force. The Government announced in the 2008 Budget that the first Saving Gateway accounts will be available in 2010.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<table>
<tr><th>Stage</th><th>Date</th><th>Hansard reference</th></tr>
<tr><td></td><td>House of Commons</td><td></td></tr>
<tr><td>Introduction</td><td>4 December 2008</td><td>Vol. 485 Column 154</td></tr>
<tr><td>Second Reading</td><td>13 January 2009</td><td>Vol. 486 Columns 133-178</td></tr>
<tr><td>Committee</td><td>27 January 2009, 3 and 5 February 2009</td><td>Hansard - Saving Gateway Accounts Bill Committee</td></tr>
<tr><td>Report and Third Reading</td><td>25 February 2009</td><td>Vol. 488 Columns 289-327</td></tr>
<tr><td></td><td>House of Lords</td><td></td></tr>
<tr><td>Introduction</td><td>26 February 2009</td><td>Vol. 708 Column 315</td></tr>
<tr><td>Second Reading</td><td>17 March 2009</td><td>Vol.709 Columns 118-139</td></tr>
<tr><td>Committee</td><td>2 and 21 April 2009</td><td>Vol. 709 Columns GC 291-354, and GC 355–384</td></tr>
<tr><td>Report</td><td>10 June 2009</td><td>Vol. 711 Columns 657-682</td></tr>
<tr><td>Third Reading</td><td>17 June 2009</td><td>Vol. 711 Column 1067</td></tr>
<tr><td></td><td>House of Commons</td><td></td></tr>
<tr><td>Commons consideration of Lords amendments</td><td>1 July 2009</td><td>Vol. 495 Column 413-422</td></tr>
<tr><td rowspan="2">Royal Assent</td><td rowspan="2">2 July 2009</td><td>House of Lords Hansard Vol. 712 Column 323</td></tr>
<tr><td>House of Commons Hansard Vol. 495 Column 510</td></tr>
</table>