

DORMANT ASSETS ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Dormant Assets Act 2022 which received Royal Assent on 24 February 2022 (c. 5).

- These Explanatory Notes have been prepared by the Department for Digital, Culture, Media and Sport 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.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Dormant Assets Act ("the Act") takes forward the Government's commitment to expand the Dormant Assets Scheme. [The Dormant Bank and Building Society Accounts Act 2008](#) ("the 2008 Act") limits the scope of the Scheme to dormant bank and building society accounts, and provides no opportunity to expand it without primary legislation.
- 2 The Act enables an authorised reclaim fund, which administers the Scheme, to accept a wider range of dormant assets, including certain assets in the insurance and pensions, investment and wealth management, and securities sectors. A dormant asset is a financial product, such as a bank account, that the customer has not used for many years, and which the provider has been unable to reunite them with, despite efforts based on industry best practice. The Act also introduces a power for the Secretary of State or the Treasury to expand the Scheme to broaden the pool of eligible dormant assets in the future.
- 3 The Act also amends the approach for distributing dormant assets funding in England, aligning it with the model used for Scotland, Wales, and Northern Ireland. The 2008 Act restricts the English portion of dormant assets funding to youth, financial inclusion, and social investment. The Act removes these restrictions and introduces a power for the Secretary of State to make an order to determine the social and environmental purposes for which, and the kinds of person to whom, dormant assets money can be distributed in England. The measure includes a statutory requirement to consult before making an order, and no changes to the existing restrictions can be formed until or unless a new order is made.

Policy background

The Dormant Assets Scheme

- 4 The Dormant Assets Scheme is led by industry and backed by the Government with the aim of reuniting people with their assets. Where this is not possible, the Scheme enables this money to support social and environmental purposes across the United Kingdom. In the first ten years of its operation, the Scheme has released over £800 million.
- 5 The Scheme is underpinned by the following principles:
 - a. reunification first: participants' first priority is to reunite owners with their assets;
 - b. full restitution: dormant assets owners are able, at any point, to reclaim the amount that would have been due to them had a transfer into the Scheme not occurred; and
 - c. voluntary participation: industry participation in the Scheme is voluntary.
- 6 The 2008 Act enables participating banks and building societies to voluntarily transfer funds from dormant accounts which cannot be reunited with their owners to an authorised reclaim fund. A transfer and agency agreement (TAA) is held between Reclaim Fund Ltd (RFL) and the bank or building society, and establishes a contractual framework between the two parties. The TAA outlines the operational arrangements for transfers and reclaims, and includes further details of participants' obligations to undertake reunification efforts prior to transferring eligible assets into the Scheme.
- 7 RFL manages the funds, retaining enough to meet any future reclaims, and distributing the surplus to The National Lottery Community Fund (TNLCF). TNLCF in turn makes these funds available for social and environmental purposes across the United Kingdom, in accordance with the provisions of the 2008 Act, any relevant secondary legislation, and any directions given in each of the four nations. Dormant assets funding is used to fund projects,

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or aspects of projects, for which funds would be unlikely to be made available by a Government department of a devolved administration. This is known as the principle of additionality.

- 8 The 2008 Act also provides for an alternative scheme, available to small banks and building societies. This enables firms with balance sheets below £7 billion to transfer dormant assets funds to RFL and nominate a local or aligned charity to receive the surplus. The alternative scheme is maintained but not expanded in the Act. To date, the alternative scheme has two participants.

Scheme expansion

- 9 From 2016, industry worked with the Government to consider how best to expand the Scheme. In 2017, the Commission on Dormant Assets reported on the potential to include a wider range of asset classes.¹ In 2018, the Government confirmed its support for Scheme expansion and asked industry to explore how this would work in practice.
- 10 Four senior Industry Champions took this forward, publishing their report in April 2019.² This made recommendations to industry, the Government, and regulators on broadening the Scheme to include assets from the insurance and pensions, investment and wealth management, and securities sectors.
- 11 Building on this, the Government launched a public consultation in February 2020 to gather views on the proposed approach to expansion.³ The Government's response to the consultation was published in January 2021 and committed to introducing legislation to enable Scheme expansion. Responses to the consultation informed the development of the Act.
- 12 The expanded Scheme functions in a similar manner to the pre-existing Scheme with a participant being required to sign a TAA with RFL before transferring money to it. Such an agreement gives RFL the flexibility to tailor certain provisions to the assets in question, ensuring that the relevant consumer protection efforts – including tracing, verification, and reunification – are made.
- 13 For funds that cannot be reunited with owners, despite these efforts, Scheme expansion is estimated to unlock £880 million over the next ten years for social and environmental purposes across the United Kingdom.⁴

¹ Commission on dormant assets report. March 2017. Available via:
<https://www.gov.uk/government/publications/dormant-assets-commission-final-report-to-government>

² The Dormant Assets Scheme: a blueprint for expansion. April 2019. Available via:
www.gov.uk/government/publications/the-dormant-assets-scheme-a-blueprint-for-expansion

³ Consultation on expanding the Dormant Assets Scheme. February 2020. Available via:
<https://www.gov.uk/government/consultations/consultation-on-expanding-the-dormant-assets-scheme>

⁴ Government response to the consultation on expanding the Dormant Assets Scheme. January 2021. Available via:
<https://www.gov.uk/government/publications/government-response-to-the-consultation-on-expanding-the-dormant-assets-scheme>

Classification of Reclaim Fund Ltd (RFL) as a public body

- 14 As specified in the 2008 Act, a reclaim fund is responsible for receiving dormant assets funds from participants, managing the reserves to meet customer reclaims, and making surplus funds available to TNLCF to be spent on social or environmental purposes.
- 15 RFL was established in 2010 by the Co-operative Banking Group (renamed Angel Square Investments Ltd) and (at the time of writing) is the only authorised reclaim fund in the United Kingdom. Following a decision by the Office for National Statistics to classify RFL to the central Government subsector, RFL has been established as a Non-Departmental Public Body (NDPB) of the Treasury, operating at arm's length from the Government. RFL continues to manage the Scheme in an open and transparent way, governed by a separate board of directors.
- 16 RFL's funds remain separate from central Government funds, and the Treasury does not have access to dormant assets money. Surplus funds continue to be transferred to TNLCF for distribution in accordance with legislation.
- 17 The Act reflects RFL's establishment as a NDPB of the Treasury and names it as the Scheme's only authorised reclaim fund. It also includes a power for the Treasury to designate additional authorised reclaim funds in the future.

Changing the model for distributing dormant assets funding in England

- 18 The 2008 Act provides that all dormant assets money must be used to fund initiatives which have a social or environmental purpose.⁵
- 19 Funds are apportioned by TNLCF to each nation in the United Kingdom according to the [Distribution of Dormant Account Money \(Apportionment\) Order 2011 \(SI 2011/1799\)](#), based on the Barnett formula.
- 20 The 2008 Act restricted funding allocations in England further to youth, financial inclusion, and social investment. The other three nations do not have restrictions in primary legislation; instead, the relevant ministers have the power to set the particular purposes and recipients of their allocations through secondary legislation.
- 21 Within the boundaries of the 2008 Act and any such secondary legislation, each nation has powers to issue broad policy directions to TNLCF on how to allocate their portion of the funding. The Secretary of State has the power to issue policy directions to TNLCF specifying the purposes for which the English portion may be distributed. To date, TNLCF has channelled funding in England through four specialist dormant assets-funded organisations, overseen by an independent Oversight Trust.⁶

⁵ Under the alternative scheme, money can also be distributed to local charities.

⁶ These are: Big Society Capital, Access – The Foundation for Social Investment, Fair4All Finance, and Youth Futures Foundation.

- 22 Following policy directions from the Secretary of State, TNLCF has created funding agreements with each organisation in order to distribute funds, which are then drawn down by the organisations on the basis of need. There is no set time limit to these funds, which enables these independent organisations to take a long-term view of the challenges they exist to tackle.
- 23 In response to calls from the public to review these causes, the Act amends the approach to restrictions in England to allow the Government to respond to public feedback and evolving social and environmental needs by setting the causes through secondary legislation, which is subject to public consultation and parliamentary approval.
- 24 The first consultation launched under this Act must include youth, financial inclusion, and social investment as options to consider. It must also consult on an option to distribute funds to community wealth funds: a fund that provides long-term financial support to communities for the provision of social infrastructure.
- 25 No further changes, other than consequential amendments, have been made to Part 2 of the 2008 Act.

Legal background

- 26 The current legal framework for the Dormant Assets Scheme is set out in the 2008 Act.
- 27 Part 1 of the 2008 Act deals with the transfer of balances in dormant accounts. This includes provisions about the general Scheme (section 1), provisions about the alternative scheme for smaller banks and building societies (sections 2 and 3), and provisions about the functions of a reclaim fund (section 5). Under each scheme, the customer retains against the reclaim fund whatever right to payment of the balance the customer would have had against the bank or building society had the transfer(s) not happened. Under the 2008 Act, the reclaim fund must meet reclaims and manage dormant account funds in a way that enables it to meet whatever reclaims it is prudent for it to anticipate.
- 28 Under the general Scheme, a bank or building society may make a transfer to an authorised reclaim fund from a dormant account, provided the reclaim fund consents to the transfer. After the transfer, the customer no longer has any right of reclaim against the bank or building society, rather this liability is transferred to the reclaim fund.
- 29 In addition to the general Scheme, there is an alternative scheme for smaller banks and building societies. Under this scheme, a smaller bank or building society can itself transfer money from a dormant account to certain charities (for example, a charity with which it has a special connection). The reclaim fund and the charity must consent to the transfer, and a proportion of the money from the dormant account must be transferred to the reclaim fund. In determining what this proportion must be, the reclaim fund must take account of the need to have access at any point to enough money to enable it to meet whatever reclaims it is prudent to anticipate (section 2(4)). After the transfer, the customer no longer has any right of reclaim against the bank or building society, but instead can claim from the reclaim fund whatever they would have been owed had the transfer not happened.
- 30 Section 1 and section 2 of the 2008 Act provide for transfers to be made to an "authorised" reclaim fund. Section 6 defines "authorised" as meaning authorised for the purposes of the [Financial Services and Markets Act 2000 \(FSMA\)](#). Section 31 of FSMA makes provision for "authorised persons", including a person who has a Part 4A FSMA permission to carry out one or more regulated activities (as set out in section 22(1) and Schedule 2 of FSMA). The 2008 Act made various amendments to FSMA. This included adding the activities of a reclaim fund to

the list of activities in Schedule 2 to FSMA (Schedule 2 provides a non-exhaustive list of activities which may be specified under section 22 of FSMA as regulated activities). Article 63N of the [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(SI 2001/544\)](#) specifies activities of reclaim funds that are regulated activities for the purposes of FSMA.

- 31 Section 5 of and Schedule 1 to the 2008 Act set out requirements about provision to be made in the articles of association of a reclaim fund. For example, the objects of a reclaim fund must be restricted by its articles of association to those matters in section 5(1) e.g., the meeting of reclaims.
- 32 Part 2 of the 2008 Act makes provision about the distribution of money under the general Scheme. Under the general Scheme, dormant account money is distributed by the Big Lottery Fund (now operating as TNLCF). Schedule 3 to the 2008 Act makes further provision about the functions of TNLCF in relation to dormant account money.
- 33 Section 16 makes provision about the distribution of dormant account money by TNLCF, in particular that it must distribute dormant account money for meeting expenditure that has a social or environmental purpose. Section 17 makes provision about the apportionment of dormant account money between the different nations in the United Kingdom. An order prescribing the percentages for the purpose of section 17(1) was made in 2011 ([SI 2011/1799](#)). Section 18 provides further restrictions as to the purposes for which, or people to which, dormant account money can be distributed for meeting English expenditure. Sections 19-21 provide a power for the respective devolved administrations to set out such restrictions for the relevant nation's expenditure by way of order. The Welsh ministers have made an order ([SI 2010/1317](#)), as have the Scottish ministers ([SSI 2010/278](#)).
- 34 There is also a power to give directions to TNLCF under section 22. This requires TNLCF to comply with any directions given to it by the Secretary of State (in relation to English expenditure) or by the devolved administrations (in relation to their nation's portion of the expenditure). A direction under section 22 may specify, for example, matters to be taken into account in determining the persons to whom TNLCF distributes money, or the purposes for which TNLCF may or may not distribute money. In addition, the Secretary of State (but not the devolved administrations) may give directions under subsection (4) relating to operational matters such as financial management, staffing and accounts. TNLCF must be consulted before any direction is given under section 22.

Territorial extent and application

- 35 Section 34 sets out the territorial extent of the Act; that is the legal jurisdiction of which the provisions of the Act are intended to form part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. In this Act, the extent is to the whole of the United Kingdom. The application of the Act is to the whole of the United Kingdom except section 29 which applies to England only.
- 36 The matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

Commentary on provisions of Act

Part 1: The Dormant Assets Scheme

Section 1: The Dormant Assets Scheme: Overview

- 37 This section provides an overview of the operation of the Scheme, which enables eligible participants to transfer money from dormant or unwanted assets to an authorised reclaim fund. Having determined how much it must retain in order to meet any future reclaims, the section allows the reclaim fund to distribute the surplus to TNLCF.
- 38 Subsection (3) sets out the main features of the Dormant Assets Scheme, which mirror those specified in the 2008 Act. It ensures that once a participant transfers an asset to the reclaim fund, any liability pertaining to the transfer, including any liability to meet owner reclaims, is extinguished and makes provisions for the reclaim fund to take on the liability to meet such reclaims.
- 39 Beneficial owners can always reclaim the full amount owed to them. Participants transfer the dormant money to the reclaim fund. Participants act as agents of the reclaim fund – for example, maintaining owner engagement, records, and personal data on its behalf; and managing and verifying reclaims before recouping the amount from the reclaim fund. Owners therefore engage with participants – rather than the reclaim fund – in order to make a reclaim.
- 40 Subsection (5) provides that the reclaim fund retains sufficient funds to meet future reclaims and that surplus money can be distributed via TNLCF for social and environmental purposes.
- 41 Subsection (6) lists the dormant assets which fall in scope of the Scheme:
- a. Bank and building society accounts, which includes suspense accounts, specified in section 1 of the 2008 Act;
 - b. Long-term insurance assets as specified in sections 2 to 4 in the Act;
 - c. Pension assets as specified in sections 5 to 7 in the Act;
 - d. Investment assets as specified in sections 8 to 11 in the Act;
 - e. Client money assets as specified in sections 12 and 13; and
 - f. Securities assets as specified in sections 14 to 16 in the Act.
- 42 Subsection (7) states that this Act supersedes the general Scheme under the 2008 Act, but does not affect its continued operation.
- 43 Subsection (8) disapplies the following from the Scheme:
- a. a transfer of an agreed proportion of a balance from the alternative scheme for smaller institutions under section 2 of the 2008 Act; and
 - b. unwanted assets, i.e. where owners have chosen to give away all or part of their asset to the reclaim fund.
- 44 Subsection (9) clarifies that activities may be carried out directly by an institution or by another person acting on its behalf.
- 45 Subsection (10) ensures that the provisions of Part 1 relating to transfers of dormant assets to the reclaim fund cover not only cases where an amount is payable immediately (i.e., as a debt) but also cases where the person entitled to an amount needs to request payment, or that person's entitlement needs to be verified, before the amount becomes payable immediately.

Sections 2-4: Long-term insurance assets

- 46 These sections define the insurance assets and participants in scope of the Scheme. They also set out an owner's right to reclaim and the definitions of dormancy for insurance assets.

Section 2: Transfer of eligible insurance proceeds to reclaim fund

- 47 This section provides that an insurance institution can transfer dormant insurance proceeds to an authorised reclaim fund, if the latter consents to it. Upon the transfer, the owner no longer has the right to payment of the proceeds against any insurance institution, but rather has that right against the reclaim fund.
- 48 If that person has died, whoever the right to payment from the insurance institution would have passed on to has the right to payment from the reclaim fund.
- 49 This section also defines the type of insurance institutions that are and are not eligible to participate in the Scheme in relation to insurance proceeds.

Section 3: "Eligible insurance proceeds"

- 50 This section provides that dormant proceeds of a long-term insurance contract are in scope of the Scheme provided that it is not a with-profits policy, an industrial branch policy, or a policy that is the subject of a trust. Insurance proceeds held in a Lifetime ISA are excluded when their transfer to the reclaim fund would result in liability to pay a withdrawal charge to HMRC.
- 51 This section provides that:
- a. a non-cash asset must be converted to cash in line with its relevant terms and conditions before it is eligible for transfer into the Scheme. For long-term insurance contracts, this could be, for example, when it reaches its contractual end date or when the owner is deceased; and
 - b. the amount that can be reclaimed is adjusted as appropriate (e.g., for any relevant interest or fees) so that the owner has the same right to repayment from the reclaim fund as they would have had against the participant if the transfer had not taken place.

Section 4: Meaning of "dormant" in relation to eligible insurance proceeds

- 52 This section provides that an insurance asset can be classed as dormant if any of the four conditions set out in subsections (2)-(5) are met.
- 53 Subsection (2) sets out the first condition: that an insurance asset can be classed as dormant if the person whose life is insured is deceased and the participant is satisfied that there is no owner. This captures circumstances where the participant knows that the deceased person has no beneficiaries.
- 54 Subsection (3) sets out the second condition; namely, that an insurance asset can be classed as dormant if:
- a. at least seven years have passed since the participant was notified that the person whose life was insured is deceased; and
 - b. there has been no communication from the owner, anyone acting on their behalf, or anyone administering the deceased person's estate since that time.
- 55 Subsection (4) sets out the third condition; namely, that an insurance asset can be classed as dormant if:

- a. records indicate that the person whose life was insured would be at least 120 years old (i.e. that the participant can reasonably assume they are deceased); and
 - b. there has been no communication from the owner, anyone acting on their behalf, or anyone administering the deceased person's estate during the preceding seven years.
- 56 Subsection (5) sets out the fourth condition; namely, that an insurance asset can be classed as dormant if:
- a. at least seven years have passed since the end of the contractual term; and
 - b. there has been no communication from the owner or anyone acting on their behalf since that time.
- 57 Subsection (6) defines a responsible institution as the insurance institution assessing whether the asset meets any of the four conditions set out in subsections (2)-(5).

Sections 5-7: Pension assets

- 58 These sections define the pension assets and participants in scope of the Scheme. They also set out an owner's right to reclaim and the definitions of dormancy for pension assets.

Section 5: Transfer of eligible pension benefits to reclaim fund

- 59 This section provides that a pension institution can transfer dormant pension benefits to an authorised reclaim fund, if the latter consents to it. Upon the transfer, the owner no longer has the right to payment of the benefits against any pension institution, but rather has that right against the reclaim fund.
- 60 If that person has died, whoever the right to payment from the pension institution would have passed on to has the right to payment from the reclaim fund.
- 61 This section also defines the type of pension institutions that are and are not eligible to participate in the Scheme in relation to pension benefits.

Section 6: "Eligible pension benefits"

- 62 This section provides that the following dormant pension benefits are in scope of the Scheme:
- a. an income withdrawal that has become payable;
 - b. a personal pension with money purchase arrangements that has become payable; and
 - c. a personal pension with money purchase arrangements available to become payable.
- 63 This provision excludes personal pension schemes whose owners were automatically enrolled, and any scheme with sums invested in with-profit funds.
- 64 This section provides that:
- a. a non-cash asset must be converted to cash in line with its relevant terms and conditions before it is eligible for transfer into the Scheme. Personal pension schemes are only in scope of the Scheme if this conversion happens because the owner is deceased. Where an income withdrawal is purchased as a standalone product (as opposed to becoming owed as part of a personal pension scheme), this conversion could also occur when it reaches its contractual end date; and
 - b. the amount that can be reclaimed will be adjusted as appropriate (e.g. for any relevant fees) so that the owner has the same right to repayment from the reclaim fund as they would have had against the participant if the transfer had not taken place.

Section 7: Meaning of "dormant" in relation to eligible pension benefits

- 65 This section provides that a pension asset can be classed as dormant if any of the four conditions set out in subsections (2)-(5) are met.
- 66 Subsection (2) sets out the first condition: that a pension asset can be classed as dormant if the person in respect of whom the proceeds are owed is deceased and the participant is satisfied that there is no owner. This captures circumstances where the participant knows that the deceased person has no beneficiaries.
- 67 Subsection (3) sets out the second condition; namely, that a pension asset can be classed as dormant if:
- a. at least seven years have passed since the participant was notified that the person in respect of whom the benefits are payable is deceased; and
 - b. there has been no communication from the owner or anyone acting on their behalf since that time.
- 68 Subsection (4) sets out the third condition; namely, that a pension asset can be classed as dormant if:
- a. records indicate that the person in respect of whom the benefits are payable would be at least 120 years old (i.e. that the participant can reasonably assume they are deceased); and
 - b. there has been no communication from the owner, anyone acting on their behalf, or anyone administering the deceased person's estate during the preceding seven years.
- 69 Subsection (5) sets out the fourth condition, which is only applicable to income withdrawals as a standalone product. In addition to the first three conditions, an income withdrawal can also be classed as dormant if:
- a. at least seven years have passed since the end of the contractual term; and
 - b. there has been no communication from the owner or anyone acting on their behalf since that time.
- 70 Subsection (6) defines a responsible institution as the pension institution assessing whether the asset meets any of the four conditions set out in subsections (2)-(5).

Sections 8-11: Investment assets

- 71 These sections define the investment assets and participants in scope of the Scheme. They also set out an owner's right to reclaim and the definitions of dormancy for investment assets.

Section 8: Transfer of eligible amount owing by virtue of a collective scheme investment

- 72 This section provides that an investment institution can transfer a dormant eligible amount owing by virtue of a collective scheme investment to an authorised reclaim fund, if the latter consents to it. Upon the transfer, the owner no longer has the right to payment of the amount against any investment institution, but rather has that right against the reclaim fund.
- 73 If that person has died, whoever the right to payment from the investment institution would have passed on to has the right to payment from the reclaim fund.

- 74 This section also defines the type of investment institutions that are and are not eligible to participate in the Scheme in relation to an amount owing by virtue of a collective scheme investment.

Section 9: "Eligible amount owing by virtue of a collective scheme investment"

- 75 This section provides that the following dormant amounts owing by virtue of an open-ended investment company; a unit trust; or an authorised contractual scheme are in scope of the Scheme:
- a. share or unit conversion proceeds, converted to cash in line with relevant terms and provisions;
 - b. a redemption proceed;
 - c. a distribution of income; and
 - d. orphan monies.
- 76 Subsection (4) specifies that an amount held in a Lifetime ISA is excluded when its transfer to the reclaim fund would result in liability to pay a withdrawal charge to HMRC.

Section 10: Meaning of "dormant" in relation to eligible amount owing by virtue of a collective scheme investment

- 77 This section provides that an investment asset can be classed as dormant if any of the conditions set out in subsections (2), (3) and (5) are met.
- 78 Subsection (2) sets out the first condition, which is applicable to share or unit conversion proceeds. These can be classed as dormant if the owner has been "gone-away" for at least twelve years.
- 79 Subsection (3) sets out the second condition, which is applicable to a redemption proceed, a distribution of income, and orphan monies. These can be classed as dormant if the owner has been "gone-away" for at least six years.
- 80 In subsections (2) and (3), an owner can be defined as "gone-away" if there has been no communication from the owner or anyone acting on their behalf. "Gone-away" is a standard industry term used when an owner cannot be contacted successfully. There are a range of indicators that may be considered when determining if an owner is gone-away, such as whether mail has been returned, an email has bounced back, or a cheque has not been cashed. The precise definition varies and is expected to evolve over time as new technologies emerge. The section captures this concept broadly to allow for these variations.
- 81 Where the owner's other investment asset(s) held by the participant has already been classed as dormant and transferred to the Scheme, subsection (5) allows any further orphan monies received to be transferred immediately.
- 82 Subsection (7) defines a responsible institution as the investment institution assessing whether the asset meets any of the two conditions set out in subsections (2)-(3).
- 83 While the definitions of dormancy do not require this, participants can choose to wait until all of the assets they hold for an owner are dormant before transferring them into the Scheme.

Section 11: Meaning of "reclaim amount" in relation to an eligible amount owing by virtue of a collective scheme investment

- 84 This section defines the right to payment that the owner of a dormant investment asset has against an authorised reclaim fund in order to align with FCA rules.
- 85 Subsection (2) provides that the reclaim amount for conversion proceeds is the value of the share or unit at the time the participant (acting as agent for the reclaim fund, per section 23(5)(b)) accepts the owners reclaim, as well as any distributions or allocations that would have been attributable to the share or unit if the conversion had not occurred.
- 86 Subsection (4) specifies that the reclaim amount for a redemption proceed, a distribution of income, and orphan monies as whatever would have been owed had the assets not been transferred to the Scheme.
- 87 Subsection (5) affirms that the amount that can be reclaimed is adjusted as appropriate (e.g. for any relevant interest or fees) so that the owner has the same right to repayment from the reclaim fund as they would have had against the participant if the transfer had not taken place.

Sections 12-13: Client money assets

- 88 These sections define the client money assets and participants within scope of the Scheme. They also set out an owner's right to reclaim and the definitions of dormancy for client money assets.

Section 12: Transfer of eligible client money to reclaim fund

- 89 This section provides that an investment institution can transfer dormant client money to an authorised reclaim fund, if the latter consents to it. Upon the transfer, the owner no longer has the right to payment of the money against any investment institution, but rather has that right against the reclaim fund.
- 90 If that person has died, whoever the right to payment from the investment institution would have passed on to has the right to payment from the reclaim fund.
- 91 Subsection (4) specifies that money that could be transferred to the reclaim fund under any other provision in Part 1 (or under provisions for unwanted assets) cannot be defined as eligible client money. It also excludes share or unit conversion proceeds from collective scheme investments from being defined as eligible client money, even if the investment institution holding it is not in scope of section 8.
- 92 Subsection (5) specifies that client money held in a Lifetime ISA is excluded if its transfer to the reclaim fund would result in liability to pay a withdrawal charge to HMRC.
- 93 This section also defines the type of investment institutions that are and are not eligible to participate in the Scheme in relation to client money.

Section 13: Meaning of "dormant" in relation to eligible client money

- 94 This section provides that client money can be classed as dormant if the responsible institution is satisfied that the owner has been "gone-away" for at least six years.
- 95 An owner can be defined as "gone-away" if there has been no communication from the owner or anyone acting on their behalf. "Gone-away" is a standard industry term used when an owner cannot be contacted successfully. There are a range of indicators that may be

considered when determining if an owner is gone-away, such as whether mail has been returned, an email has bounced back, or a cheque has not been cashed. The precise definition varies and is expected to evolve over time as new technologies emerge. The section captures this concept broadly to allow for these variations.

- 96 Subsection (5) defines a responsible institution as the investment institution assessing whether the asset meets the dormancy condition.

Sections 14-16: Securities assets

- 97 These sections define the securities assets and participants in scope of the Scheme. They also set out an owner's right to reclaim and the definitions of dormancy for securities assets.

Section 14: Transfer of eligible proceeds or distribution to reclaim fund

- 98 This section provides that a traded public company can transfer dormant proceeds or a distribution relating to a share to an authorised reclaim fund, if the latter consents to it.
- 99 Upon the transfer, the owner no longer has the right to payment of the proceeds or distribution against any traded public company (or, where the shareholder and beneficial owner are different individuals, against the shareholder). Instead, the owner has the right to payment of the proceeds or distribution against the reclaim fund.
- 100 If that person has died, whoever the right to payment would have passed onto has the right to payment from the reclaim fund.
- 101 This section defines the type of traded public company that is eligible to participate in the Scheme as a public company that is traded on a UK-regulated market or UK multilateral trading facility.

Section 15: "Eligible proceeds or distribution"

- 102 This section provides that the following dormant proceeds or distribution are in scope of the Scheme, provided that the shareholder is a natural person:
- a. share conversion proceeds, converted to cash in line with relevant articles, terms, and/or provisions;
 - b. a cash distribution from a share; and
 - c. proceeds from corporate actions.
- 103 Subsection (2) specifies that an amount held in a Lifetime ISA is excluded when its transfer to the reclaim fund would result in liability to pay a withdrawal charge to HMRC.
- 104 Share conversion proceeds in the securities sector are only in scope on the condition that the articles, terms, and/or provisions that govern them enable a gone-away shareholder, should they return, to reclaim the value of the share at the point it was converted to cash. After adjusting as appropriate (e.g. for any relevant interest or fees), this will be the reclaim amount for the purposes of the Scheme.

Section 16: Meaning of "dormant" in relation to eligible proceeds or distribution

- 105 This section provides the definitions of dormancy for securities assets.
- 106 Subsection (2) provides that share conversion proceeds or a distribution can be classed as dormant if the shareholder has been identified as "gone-away" for at least twelve years.

107 A shareholder can be defined as "gone-away" if there has been no communication from the shareholder or anyone acting on their behalf. "Gone-away" is a standard industry term used when a shareholder cannot be contacted successfully. There are a range of indicators that may be considered when determining if a shareholder is gone-away, such as whether mail has been returned, an email has bounced back, or a cheque has not been cashed. The precise definition varies and is expected to evolve over time as new technologies emerge. The section captures this concept broadly to allow for these variations.

108 Subsections (4) and (5) provide that corporate action proceeds can be classed as dormant:

- a. at least twelve years after the company was notified of the consideration and the proceeds have remained unclaimed; or
- b. immediately, if the share to which the corporate action proceeds relate has already been transferred to the Scheme.

Section 17: Transfers: general

109 Subsection (1) provides that a transfer into the Scheme is not in itself a breach of trust or fiduciary duties. It also ensures that it does not give rise to any liabilities for any institution, other than the liability on the reclaim fund to meet reclaims. This does not absolve a participant, or anyone acting on its behalf, of any liabilities which are unconnected with the transfer. For example, where a participant acted negligently in managing an asset prior to its transfer, that liability is not extinguished by virtue of the transfer.

110 Subsection (2) confirms that the right to reclaim an amount from the reclaim fund accommodates situations where that right has been passed on after the previous owner has died.

111 Subsection (3) provides for a situation where, following a transfer into the Scheme, an institution has been succeeded by another (for example, through a take-over). References to the institution in sections 2, 5, 8, 12 and 14 should be taken to mean the successor in these scenarios.

Section 18: Interpretation of Part 1

112 This section defines and clarifies terms used in Part 1 that are relevant to more than one section.

Part 2: Other Provisions

Section 19: Power to extend the dormant assets scheme to cover new dormant assets

113 This section provides a power for the Secretary of State or the Treasury to bring additional asset classes in scope of the Scheme. This might include ones which have already been proposed for inclusion but whose suitability needs further exploration, new ones, or ones where dormancy has not yet been identified as an issue. The power also enables the Secretary of State or the Treasury to amend the current asset classes so that they can cover new types of assets within that class, and make consequential amendments.

114 Subsection (1) allows the Secretary of State or the Treasury to amend Part 1 of the Act or the 2008 Act by regulations for this purpose. Subsections (2) and (3) make further provision about what such regulations must and can include; for example, identifying when dormancy exists and ensuring that the owner has a right to payment against an authorised reclaim fund.

- 115 Under subsection (4), the Secretary of State or the Treasury may include in such regulations provision to enable participants to convert a dormant non-cash asset into cash in order for it to be transferred into the Scheme, where the asset's terms do not provide for this. Subsections (5)-(8) make further provision about what such regulations must do.
- 116 Subsection (9) ensures that all assets currently in scope cannot be excluded or have their associated definitions of dormancy altered using this power. Subsection (10) provides that any regulations made under this power must be approved by both Houses of Parliament.

Section 20: Return of surplus alternative scheme assets

- 117 Section 2 of the 2008 Act makes provision for the alternative scheme for smaller banks and building societies. The 2008 Act also allows for an authorised reclaim fund to remodel the proportion of funds that it reserves for reclaims - provided that it meets its objects in section 5(1) of the 2008 Act - and, per section 5(1)(c), for any surplus funds to be distributed to TNLCF. Section 20 of the Act introduces a means for the reclaim fund to transfer additional surplus money from the alternative scheme back to the participant to be distributed to local or aligned charities. This is included as new section 2A in the 2008 Act.
- 118 Subsection (1) of the new section 2A in the 2008 Act specifies that an authorised reclaim fund may only return surplus money if it no longer needs to retain the funds, for example for the purpose of meeting reclaims. The section then sets out the steps the reclaim fund must take if that condition is met in order to transfer the additional surplus money to the alternative scheme participant.
- 119 Subsection (6) prescribes that the alternative scheme participant must consent to receiving surplus funds from the reclaim fund. If it does not consent, subsection (7) allows for the reclaim fund to transfer these surplus funds to TNLCF.
- 120 Subsection (8) requires the alternative scheme participant that has received surplus funds to transfer them to charity. Subsections (9) and (10) define an eligible charity as one which:
- a. is considered to have a special connection with the smaller bank or building society; or
 - b. will use the money to benefit communities which are local to the smaller bank or building society's branches.
- 121 Aside from this new section, the alternative scheme remains as it is. It continues to be available to those smaller banks and building societies that meet the assets-limit condition. Its scope has not been extended to cover new assets or participants.

Section 21: Unwanted assets

- 122 The Dormant Assets Scheme requires participants to have attempted to reunite an asset with its owner before it can be classed as dormant and transferred to the Scheme. When these reunification efforts are successful, the owner may decide that they no longer want their asset. This could be, for example, because the asset is of low value, and the owner does not want the administrative effort of reclaiming it (such as -£5 in a deposit account, a share worth -£2, etc). This section enables these unwanted assets to be donated to the Scheme.
- 123 Subsection (2) provides that an owner can opt for all or part of their asset to be donated to the Scheme. This must be an asset otherwise in scope of the Dormant Assets Scheme - i.e. of the type provided for in section 8 of the 2008 Act, or sections 3, 6, 9, 12 or 15 in this Act. The owner must declare that no other person has a right in or over the asset, and an authorised reclaim fund must consent to the transfer. Subsection (2) also provides that unwanted assets cannot be reclaimed from an authorised reclaim fund, given that they have been donated by the owner.

Sections 22-25: Provisions applicable to more than one scheme

124 These sections outline core provisions underpinning the practical operation of the Scheme, including contractual arrangements between an authorised reclaim fund and participants, and how information is shared between participants and the reclaim fund.

Section 22: Third party rights and interests

125 This section ensures that third party rights and interests are preserved upon an asset being transferred to an authorised reclaim fund.

126 A participant or an authorised reclaim fund will not always know what, if any, third party rights or interests may exist in relation to an asset. This may be, for example, because they may arise pursuant to a private contract entered into between an owner and a third party. Therefore, if a third party legitimately asserts their rights or interests in respect of a dormant asset after its transfer to the Scheme, that third party will have an equivalent right of reclaim.

Section 23: Arrangements between reclaim fund and institutions

127 This section provides that an authorised reclaim fund may only accept transfers from an institution if it has made contractual or other arrangements with the institution that the reclaim fund considers to be a satisfactory basis for accepting such transfers. An institution is considered a participant once these arrangements are in place.

128 While the 2008 Act does not make reference to the agreements held between the reclaim fund and participants, or the requirement for participants to make reunification efforts, these provisions are based on existing practice.

129 Subsections (2) and (3) specify that the arrangements must include provisions requiring the participant to take steps to reunite assets with their owners. The section does not stipulate the specific tracing, verification, and reunification practices that should be included in the arrangements, allowing for the practices to be tailored and improved over time. Subsection (4) clarifies that these requirements do not apply for unwanted assets.

130 Subsection (5) specifies what the arrangements may provide for. This includes participants maintaining customer engagement on the reclaim fund's behalf, including managing owner reclaims.

131 In line with current practice, there may be cases where undertaking steps to trace and verify an owner would be disproportionate, or otherwise unnecessary. For example, this could be because a dormant asset is of such low value that it would cost the participant a significant proportion of what it is worth to try to reunite it with its owner. To accommodate these situations and enable participants to determine appropriate de minimis values, subsections (5)(a) and (6) allow for reasonable exceptions to be agreed in the arrangements where tracing and verification would be disproportionate or unnecessary.

Section 24: Effect of insolvency etc. of institutions

132 This section sets out the effect of insolvency of a participant on an owner's right to reclaim.

133 An authorised reclaim fund is liable for meeting reclaims for assets transferred by a participant, even if that participant becomes insolvent or winds up. However, a person's right to payment is limited to the amount they would have received from the participant in its insolvency (i.e. what would have happened had the transfer not occurred). This may result in the owner's entitlement being reduced or even valued at nil.

134 Any right to payment arising under section 11 of the 2008 Act (a customer's rights preserved on insolvency etc. of a bank or building society) continues to apply to rights acquired before this section comes into force.

Section 25: Disclosure of information

135 This section provides that common law or other obligations pertaining to confidentiality do not prevent a participant from disclosing information to an authorised reclaim fund for the purposes of enabling the reclaim fund to plan for or deal with reclaims.

136 This section responds to exceptional circumstances where the transfer of confidential information from the participant to the reclaim fund may be necessary, for example where a dispute arises which involves the reclaim fund directly.

137 A disclosure of information should not be made under this section if it would breach data protection legislation.

Sections 26-28: Provisions relating more than one scheme

138 These sections make provisions relating to an authorised reclaim fund.

139 They name RFL as the authorised reclaim fund for the Scheme and provide the Treasury with the power to name another authorised reclaim fund in the future - either in addition to, or to replace, RFL.

140 They also remove RFL's activities from the scope of Financial Services Compensation Scheme (FSCS) protection, and provide that the Treasury could provide RFL with a loan in the event of potential insolvency, in recognition of its status as a NDPB of the Treasury.

Section 26: Meaning of "authorised reclaim fund"

141 Subsection (1) defines an authorised reclaim fund, with subsection (2) naming RFL as an authorised reclaim fund.

142 Subsection (3) provides the Treasury with the power to add or remove a company named in the Act as an authorised reclaim fund. It also provides the Treasury with the power to specify which assets a reclaim fund is responsible for managing.

Section 27: Treasury Loans

143 This section provides that, in the event an authorised reclaim fund is, or looks likely to be, unable to meet its reclaim liabilities, the Treasury can provide RFL with a loan to cover these liabilities out of money provided by Parliament. The loan's purpose is to support an authorised reclaim fund until it is able to cover these costs with its own income. At this point, the Government would look to recoup its costs. The contingent liability will remain in place throughout the operation of an authorised reclaim fund. The Treasury will note the liability in its accounts.

Section 28: Exclusion of repayment claims from Financial Services Compensation Scheme

144 This section has the effect of removing the FSCS protection for an authorised reclaim fund's activities, which section 27 replaces with a Treasury loan.

Section 29: Distribution of dormant assets money for meeting English expenditure

- 145 This section amends the approach in the 2008 Act for distributing dormant assets money in England. It enables the Secretary of State to make secondary legislation determining the types of social and environmental purposes to which funding can be distributed in England.
- 146 Subsection (1) inserts a new section 18A into the 2008 Act, which provides the Secretary of State with the power to restrict the particular purposes or people for which dormant assets money (which includes money from unwanted assets) in England can be distributed. This is in line with the powers that the devolved administrations have for their respective nations under sections 19-21 of the 2008 Act.
- 147 Subsection (4) of this section and subsection (2) of the new 18A provide that an order may make transitional or saving provisions, for example to honour any outstanding funding commitments made under section 18 of the 2008 Act.
- 148 Subsection (3) of the new 18A includes a statutory requirement for the Secretary of State to consult with the public on the social or environmental purposes of the English portion of funds before making an order. The Secretary of State must then consult with TNLCF on a draft of the order, and the draft order must be approved by both Houses of Parliament before it can be made.
- 149 Subsection (4) also requires the Secretary of State, in the first public consultation under this section, to consult on whether distributions of dormant assets funding in England should include any one or more of the following: youth, financial inclusion, social investment wholesalers, and community wealth funds. This does not preclude the Secretary of State from including any other additional purpose in the consultation.
- 150 Section 18 of the 2008 Act, which makes restrictions on English distributions in primary legislation, will be repealed on the day that the first order made under section 18A comes into force.
- 151 The restrictions of youth, financial inclusion, and social investment wholesalers specified by the 2008 Act will remain in place until or unless new secondary legislation comes into force. From that day, the restrictions on distributions in England will be specified in secondary - rather than primary - legislation.

Section 30: Periodic review and report to Parliament

- 152 This section requires the Secretary of State to carry out periodic reviews of the general Scheme and the alternative scheme under section 2 of the Dormant Bank and Building Society Accounts Act 2008, and lay the results and conclusions in a report before Parliament.
- 153 Subsections (1) and (2) provide that the review must consider:
- a. the operation of the Scheme and the alternative scheme, including how many institutions have made transfers, how much money has been transferred, and the effectiveness of arrangements with participants to meet repayment claims;
 - b. the effectiveness of steps taken to reunite assets with their owners; and
 - c. any use of the power to extend the Scheme under section 19 during and after that period.
- 154 As well as information on the findings of the review, subsection (7) requires the report laid before Parliament to include information about the uses made by an authorised reclaim fund of its financial resources, the uses of dormant assets money in England, and reporting on how the principle of additionality has been met.

155 Subsections (10) and (11) require the first report to be laid no more than three years after the Act is passed, and subsequent reports to be laid every five years thereafter.

Part 3: Final Provisions

Section 31: Regulations: general

156 This section makes further provision about the regulation-making powers in the Act. For example, any power in the Act to make regulations (other than the power to make commencement regulations) includes the power to make incidental, supplemental, consequential, saving or transitional provisions (including modifying primary legislation).

157 For example, consequential amendments could be made to the unwanted assets section following regulations to bring new assets into scope of the Scheme, to ensure it covers the same scope.

Section 32: Repeals in the 2008 Act and other minor or consequential amendments

158 This section sets out the provisions in the 2008 Act that are repealed by the Act.

159 Subsection (3) introduces Schedule 1, which makes minor and consequential amendments as a result of the Act. This includes amendments to FSMA 2000 and to the 2008 Act.

Section 33: Index of defined terms

160 This section introduces Schedule 2, which contains an index of terms used in the Act.

Section 34: Extent, commencement, construction as one with 2008 Act and citation

161 This section explains the geographic extent of the Act, when the provisions come into effect, and how the Act may be cited.

162 Subsection (1) provides that the Act extends to England and Wales, Scotland, and Northern Ireland.

163 Subsection (2) provides that this section comes into force on the day on which the Act is passed. Subsection (3) enables the Secretary of State to make commencement regulations to bring the other provisions in the Act into force.

164 Subsections (6) and (7) state that the Act may be cited alone as the Dormant Assets Act 2022 - or together with the 2008 Act as the Dormant Assets Acts 2008 to 2022. Subsection (5) provides that the Act and the 2008 Act are to be construed as one.

Schedule 1: Minor and consequential amendments

165 This Schedule includes various amendments to the 2008 Act and other relevant legislation as a consequence of this Act.

Schedule 2: Index of defined terms

166 This Schedule presents a table listing various terms defined or explained in the Act and the section(s) in which they are set out.

Commencement

167 Section 34 provides for the commencement of the provisions in the Act.

168 Subsection (2) specifies that section 34 comes into force on the day on which the Act is passed.

169 Subsection (3) provides that the other provisions of the Act will be brought into force by regulations made by the Secretary of State.

170 Subsection (4) provides that different days may be appointed for different purposes. In addition, the regulations may make transitional or saving provisions in connection with the coming into force of any provision in the Act.

Related documents

171 The following documents are relevant to the Act and can be read at the stated locations:

- Government response to the consultation on expanding the Dormant Assets Scheme (Jan 2021) - <https://www.gov.uk/government/publications/the-dormant-accounts-scheme/government-response-to-the-consultation-on-expanding-the-dormant-assets-scheme>
- Consultation on expanding the Dormant Assets Scheme (Feb 2020) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942209/Consultation_on_expanding_the_dormant_assets_scheme.pdf
- The Dormant Assets Scheme: A Blueprint For Expansion (April 2019) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942210/Industry_Champions_Report_on_Dormant_Assets_2019_full_report_2.pdf
- Government Response to the Commission on Dormant Assets' Report (Feb 2018)- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681983/Government_Response_to_Commission_on_Dormant_Assets_16_February_2018.pdf
- Dormant Assets Commission: final report to Government (March 2017) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727189/Tackling_dormant_assets_-_recommendations_to_benefit_investors_and_society_1.pdf
- Dormant Bank and Building Society Accounts Act (2008) - <https://www.legislation.gov.uk/ukpga/2008/31/contents>
- Dormant Assets Bill: Delegated Powers Memorandum (12 May 2021) - <https://bills.parliament.uk/publications/41511/documents/272>
- Dormant Assets Bill: 2nd Report of the Delegated Powers and Regulatory Reform Committee (27 May 2021) - <https://committees.parliament.uk/publications/6129/documents/68369/default/>

Annex A - Hansard References

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

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	12 May 2021	Vol. 812 Col. 160
Second Reading	26 May 2021	Vol. 812 Col. 1033
Grand Committee	21 June 2021	Vol. 813 Col. 1GC
	23 June 2021	Vol. 813 Col. 77GC
Report	16 November 2021	Vol. 816 Col. 167
Third Reading	23 November 2021	Vol. 816 Col. 740
<i>House of Commons</i>		
Introduction	24 November 2021	Not referenced
Second Reading	06 December 2021	Vol. 705 Col. 121
Public Bill Committee	11 January 2022	Col. 1
Report and Third Reading	31 January 2022	Vol. 708 Col. 98
Lords Consideration of Commons Amendments	09 February 2022	Vol. 818 Col. 1645
Royal Assent	24 February 2022	House of Commons Vol. 709 Col.486
		House of Lords Vol. 819

These Explanatory Notes relate to the Dormant Assets Act 2022 which received Royal Assent on 24 February 2022 (c. 5)

Annex B - Progress of Bill Table

173 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Sections 1 - 29	Clauses 1 - 29	Clauses 1 - 29	Clauses 1 - 29	Clauses 1 - 29	Clauses 1 - 29
Section 30	-	-	Clause 30	Clause 30	Clause 30
Sections 31 - 34	Clauses 30 - 33	Clauses 30 - 33	Clauses 31 - 34	Clauses 31 - 34	Clauses 31 - 34
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2

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