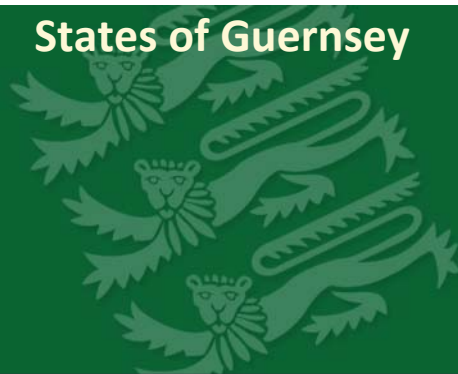


Consultation Paper

Dormant Bank Account Scheme



Purpose and type of consultation

The purpose of this consultation is to seek input from interested parties into whether Commerce & Employment Department should consider new legislation in relation to dormant bank accounts in Guernsey.

This paper summarises the position regarding dormant bank accounts, outlines what possible actions could be taken and asks for your views on whether those changes should be considered for Guernsey.

Closing date: Tuesday 3rd September 2013

The Commerce and Employment (C&E) Board:

- Would like to invite and receive comments from all interested stakeholders, financial services businesses – especially banks, customers, consumers and other users of Guernsey's financial services industry - about dormant bank accounts and how these funds could be used for the good of the island while still allowing individuals to claim funds in dormant accounts.
- Aims to work closely with stakeholders and industry to ensure Guernsey adopts the most appropriate stance in this and related matters to protect and enhance its financial services industry.

Please read and complete the disclaimer at section 9 of this paper and ensure that this is enclosed with your response.

Further information: <http://www.gov.gg/article/6814/Consultations-and-Reports>

Contacts

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Distribution

This paper will be made available as a public consultation and will be circulated to Association of Guernsey Banks and to GIBA for distribution to their members.

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1. Background

- 1.1 The public, businesses and banks in Guernsey are being asked for their views on introducing a scheme that would allow money in dormant bank accounts to be applied for the good of the Island.
- 1.2 A number of account holders forget about or lose track of bank accounts, particularly if they only contain small amounts of money.
- 1.3 Such bank accounts which still contain a balance but which have not had any transactions for many years and which the banks have unsuccessfully tried to contact the bank account holder, are known as “dormant bank accounts.”
- 1.4 The Commerce and Employment Department (“C&E”) is considering introducing a dormant bank accounts scheme in Guernsey in order that deposits in these accounts may be put towards useful purposes and for the benefit of the local community.
- 1.5 C&E are working with the Guernsey Financial Services Commission (“Commission”) on the dormant bank account initiative.
- 1.6 Many countries, including the UK have enacted legislation to harness monies in dormant bank accounts in order to employ them for the benefit of the community, subject to specific criteria being met.
- 1.7 In the UK, the *Dormant Bank and Building Society Act 2008* received Royal assent in November 2008.
- 1.8 Similar schemes have also been introduced in several other countries, including Australia, Canada, Ireland, New Zealand, Spain and the United States.
- 1.9 The Isle of Man and Jersey are also looking at introducing similar schemes.
- 1.10 Various issues exist which will be explored in this consultation paper including:
 - how to define ‘dormancy’,
 - what efforts banks should be required to make to re-unite accounts with their owners,
 - how the reclaim fund should be administered,
 - whether the scheme should be voluntary or compulsory,
 - how owners should go about reclaiming their accounts and
 - how the money collected through the scheme should be used.
- 1.11 A dormant bank account scheme could operate using a central reclaim fund into which banks would pay the deposits held in dormant accounts. The reclaim fund would be distributed to good causes but would always retain a reserve to meet future claims by depositors.
- 1.12 Primary legislation would need to be introduced to ensure amongst other things:
 - that the Commission is, if necessary, empowered to regulate a reclaim fund,
 - that the customer’s rights on insolvency of a bank would be preserved and
 - that information can be disclosed to the reclaim fund by banks so that it is able to deal with claims.

2. Summary of Dormant Account position in Guernsey and the Commission work to date

- 2.1 There is a desire to apply a consistent treatment of dormant accounts across all Crown Dependencies and to put dormant account balances to “constructive” use and for the benefit of the community.
- 2.2 The UK scheme was broadly triggered by changes in accounting rules whereby banks could not use dormant account balances for their own purposes and/or transfer them into their profit and loss account.
- 2.3 As outlined above other jurisdictions already have such schemes and the Isle of Man and Jersey are also likely to have dormant account schemes and it is preferable to make such schemes consistent across the Crown Dependencies as many banks operate in all three Crown Dependencies.
- 2.4 The Commission is involved and has previously gathered data and carried out research with local banks.
- 2.5 In October 2007 the Commission wrote to all banks advising them of the UK dormant account legislation and compiled data on dormant accounts in Guernsey banks and the practices used to monitor and record them. Further work was delayed as a result of the impact of the global financial crisis.
- 2.6 The Commission requested a sample of banks to provide information relating to dormant accounts as at 31 December 2010. Participating banks reported lower dormant account balances but there is currently no data available on the extent and quantum of dormant accounts in non sampled banks within Guernsey.
- 2.7 The Commission is in the process of obtaining more up to date data in relation to dormant bank account balances across all banks in Guernsey.
- 2.8 There are a number of possible reasons for the overall reduction.
 - As a result of the financial crisis and the low interest rate environment depositors have reviewed their banks accounts, reorganised their banking relationships and may have reactivated dormant accounts to maximise returns.
 - In addition, there is a trend for banks to transfer dormant account balances to their head offices for centralised monitoring.

3 Position in other Crown Dependencies

- 3.1 The Isle of Man carried out a consultation in January 2011 and progress is being made towards a dormant account scheme. There is political support to finalise legislation in 2013 with a scheme being operational in 2014. The IOM plan to use these funds for the “third” sector (neither private nor government) but for charitable and quasi-charitable causes.
- 3.2 Jersey issued a consultation in 2008 and more recently Jersey has prepared drafting instructions for possible legislation to be in place on a timetable similar to the IOM. Jersey is considering that Treasury hold the assets in a ring-fenced fund and would distribute the funds to be used for “good causes” within the following categories: arts; sports; national heritage; charitable purposes; purposes connected with health, education and environment.

4 Reasons for/Benefits of introducing a Dormant Account Scheme in Guernsey

- 4.1 The main benefits to depositors of introducing a dormant account scheme in Guernsey are:
- To ensure that Guernsey account holders retain an ongoing right to reclaim their money;
 - Reuniting Guernsey account holders with their money wherever possible by maintaining a record of all dormant account customer information within Guernsey;
 - Ensuring that there is a fair and transparent approach to dormant accounts.
- 4.2 The main benefits to Guernsey of introducing a dormant account scheme are:
- Retention of dormant account assets within Guernsey;
 - Distribution of unclaimed funds for use in Guernsey – possibly for good causes;
 - A transparent and a fully accountable asset distribution process;
 - Protect and enhance the reputation of the local financial services industry.
 - Ensure that financial institutions are not put in the position of being unable to comply with AML/CFT obligations, particularly ‘Know Your Client’ obligations, but at the same time being unable to dispose of dormant assets.

GENERAL COMMENTS REQUIRED ON Dormant Bank Accounts

1. *Comments are invited on the general background and possible treatment in relation to dormant accounts.*

5 Possible scheme options

- 5.1 This discussion on possible treatment of dormant accounts is in light of other schemes already set up and the proposals in the other Crown Dependencies.
- 5.2 A Dormant Account Reclaim Fund (‘the reclaim fund’) could be set up which receives dormant account funds from the banks after a certain period of time.
- 5.3 An account could be regarded as “dormant” at a particular time if the account had been open throughout the period of 15 years ending at that time, but during that period no transactions have been carried out in relation to the account by or on the instructions of the holder of the account and the bank has tried, without success, to contact the account holder. For fixed term savings products this relates to the period after a deposit matures.
- 5.4 An account could also be regarded as “dormant” on closure of a bank in Guernsey, provided that the bank had taken all reasonable steps to “contact” the owner, but had not been successful. It is proposed that the period of dormancy should be a minimum of 5 years since closure but in practice could be longer after closure in cases where the bank has arranged to place unclaimed customer assets into a trust.
- 5.5 The scheme could apply to all banks licensed to take deposits in Guernsey under the Banking Supervision (Bailiwick of Guernsey) Law 1994 and a proportion of the total funds could be directed to good causes and to benefit the island.

- 5.6 After the transfer of a balance from a bank into the reclaim fund the customer would no longer have any right against the bank to payment of the balance, but they would have rights against the reclaim fund reflecting whatever right to payment of the balance they would have against the bank if the transfer had not happened. The balance of a person's account would be regarded as the amount owing to the person in respect of the account, after the appropriate adjustments have been made for interest due and fees and charges payable.
- 5.7 Various options exist for the administration of these funds as set out below, but whichever option is adopted there could be a pre-agreed mandate for the administrator which is limited to:
- the meeting of repayment claims from dormant bank account holders who have come forward to claim their monies after they have been transferred from their bank to the fund;
 - the management of dormant account funds in such a way as to enable the company to meet whatever repayment claims it is prudent to anticipate – so a proportion of the funds are always maintained in the event that an account holder comes forward to claim their monies;
 - the transfer of money to a specified body – perhaps the establishment of a Dormant Account Distribution Board, subject to the need for the Board to have access at any given time to enough money to meet whatever repayment claims it is prudent to anticipate;
 - to comply with any requirement with regard to its financial resources that is imposed on it by or under any enactment, and to defray its expenses;
 - to distribute funds, after a prudent amount has been retained, for good causes and for the benefit of Guernsey under clearly stated, open and transparent rules;
 - other objects incidental or conducive to, or otherwise connected with, any of the above including the prudent investment of dormant account funds.
- 5.8 The scheme could be administered in a number of different ways including:
- By a separate independent organisation regulated by the Commission.
 - An alternative option to a separate scheme as outlined above is for the fund to be managed directly by the States of Guernsey, probably the Treasury and Resources Department.
 - The States could establish for what purposes the funds could be used which may include good causes or other general Guernsey projects.

- 2. *Is the suggested test for dormancy appropriate, i.e. that there should be no transactions or communication from the account holder for 15 years?***
- 3. *What procedures should banks be required to use to attempt to contact the holders of accounts before classifying them as dormant?***
- 4. *Do you agree that on closure of a bank, accounts could be classified as dormant notwithstanding that the period of dormancy was less than 5 years?***
- 5. *Should the reclaim fund be based within government (e.g. Treasury and Resources) or should it be an independent body?***
- 6. *If the reclaim fund is to be an independent body, how should the trustees/commissioners be appointed?***

- 7. *Should the distribution of the money be carried out by the reclaim fund or by a separate body?***
- 8. *Should the scheme be voluntary or compulsory for banks?***
- 9. *Should account holders continue to deal with banks following a transfer of the deposits to the reclaim fund, or should there be a central register, so that customers would make a claim directly on the reclaim fund?***
- 10. *If claims are made should they be to the bank? In which case, should the bank concerned pay out the funds as soon as it is satisfied that the claim is valid, or should it first await receipt of the funds from the reclaim fund? Or should the reclaim be administered by the reclaim fund?***
- 11. *Should the money raised be used for the benefit of specific good causes for the population of Guernsey? If so, which ones?***
- 12. *If the money should be used for charity generally, on what basis should the distributor decide how to allocate the money available?***
- 13. *Should a public awareness campaign (beyond the usual distribution of information about new legislation) be conducted prior to the scheme coming into effect? If so, what form should such a campaign take?***
- 14. *What factors should be taken into account in assessing applications for grants to good causes? Should grants be made for running costs or for capital expenditure or for both? Should there be a requirement for matching contributions?***

6 Other Considerations

- 6.1** Any dormant bank account holder who makes a claim against the fund may expect the interest rate which he would have been due to receive to be paid even though it would be the fund making the payment. The various dormant accounts which make up the total amount held by the fund would be subject to different rates of interest making it difficult to follow all rates of interest. Therefore, there could be a mechanism whereby the overseeing body of any fund sets a uniform rate of interest which overrides the individual interest rates which had applied to each account.
- 6.2** Bank accounts in Guernsey are in various currencies in addition to Sterling. It is likely that the fund would only keep balances in one currency, most probably Sterling, which would mean that if the holder of a dormant account came forward they may want to be paid in the currency in which their account was held resulting in potential losses or gains for the fund due to exchange rate fluctuations between the time the original balance was transferred into the fund and the time of a claim. This exchange rate risk could be borne by the fund or the original bank. Alternatively, the scheme could specify that all dormant accounts are converted to Guernsey currency upon transfer to the scheme.

- 6.3 In addition to dormant bank accounts with liquid assets there may be other less liquid assets held in Guernsey accounts (e.g. coins, jewellery) which could also be deemed to be dormant after a period of time. There are additional complications with such assets such as valuation costs, fluctuations in market prices. At this time it is not considered appropriate to include such physical assets in the dormant account scheme.
- 6.4 Dormant accounts (bank account assets which have an owner but whose owner cannot be traced) are legally distinct from bona vacantia which, in Guernsey, is collected by Her Majesty's Receiver General on behalf of the Crown. Bona vacantia is personal property formerly belonging to a deceased individual where there is no heir or successor, or to a dissolved company, and which property therefore has no legal owner. However, there may be some potential for uncertainty in practice as to whether assets in a bank account should be treated as dormant or as bona vacantia. In the case of accounts in the name of a company, it should be fairly straightforward to determine whether or not the company has been dissolved before deciding how to treat the assets. In the case of individuals, it may in some cases be more difficult to determine whether the account has an owner who cannot be traced (in which case the account is properly treated as a dormant account) or whether it in fact has no legal owner (in which case it is properly treated as bona vacantia). It may be necessary to introduce some presumptions and/or guidance on how banks should deal with such assets.

15. How should the level of interest rate be determined for dormant accounts which are claimed?

16. Who should bear the exchange rate risk for any dormant accounts which are claimed but which are not held in the fund's currency?

17. Should dormant accounts in other currencies be converted to Guernsey currency?

18. Do you consider it appropriate that accounts which hold less liquid assets should not be included in the dormant accounts scheme?

19. What other areas in relation to dormant accounts which have not been covered by this consultation should be considered?

7 Next steps

- 7.1 Responses will be collected and a summary be made public.
- 7.2 Responses will be considered by Commerce and Employment to inform a policy decision on dormant accounts.
- 7.3 Any policy change is likely to result in primary legislation. The Commerce and Employment would then proceed with drafting instructions and liaison with the Law Officers on drafting legislation.

Dormant Bank Account Scheme

8. Summary of Consultation questions

GENERAL COMMENTS REQUIRED ON Dormant Bank Accounts

1. Comments are invited on the general background and possible treatment in relation to dormant accounts.

Possible scheme options

2. Is the suggested test for dormancy appropriate, i.e. that there should be no transactions or communication from the account holder for 15 years?
3. What procedures should banks be required to use to attempt to contact the holders of accounts before classifying them as dormant?
4. Do you agree that on closure of a bank, accounts could be classified as dormant notwithstanding that the period of dormancy was less than 15 years?
5. Should the reclaim fund be based within government (e.g. Treasury and Resources) or should it be an independent body?
6. If the reclaim fund is to be an independent body, how should the trustees/commissioners be appointed?
7. Should the distribution of the money be carried out by the reclaim fund or by a separate body?
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9. Should account-holders continue to deal with banks following a transfer of the deposits to the reclaim fund, or should there be a central register, so that customers would make a claim directly on the reclaim fund?
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12. If the money should be used for charity generally, on what basis should the distributor decide how to allocate the money available?
13. Should a public awareness campaign (beyond the usual distribution of information about new legislation) be conducted prior to the scheme coming into effect? If so, what form should such a campaign take?
14. What factors should be taken into account in assessing applications for grants to good causes? Should grants be made for running costs or for capital expenditure or for both? Should there be a requirement for matching contributions?

Other Considerations

15. How should the level of interest rate be determined for dormant accounts which are claimed?
16. Who should bear the exchange rate risk for any dormant accounts which are claimed but which are not held in the fund's currency?
17. Should dormant accounts in other currencies be converted to Guernsey currency?
18. Do you consider it appropriate that accounts which hold less liquid assets should not be included in the dormant accounts scheme?
19. What other areas in relation to dormant accounts which have not been covered by this consultation should be considered?

9. How to respond:

PLEASE SEND COMMENTS TO

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Disclaimer

**Please note that consultation responses may be made public.*

*(sent to other interested parties on request, quoted in a published report, reported in the media,
published on www.gov.gg, listed on a consultation summary etc.)*

**Please clearly indicate (by using the tick boxes) in your response how the Department should treat
your response, the options available include:*

I agree that my comments may be made public and attributed to me per details listed below ☐

I agree that my comments may be made public but not attributed (i.e. anonymous) ☐

I don't want my comments made public ☐

Name:	<hr/> <hr/>
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