EXPLANATORY MEMORANDUM TO

THE DISTRIBUTION OF DORMANT ACCOUNT MONEY (APPORTIONMENT) ORDER 2011

2011 No. 1799

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by the Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order sets out how the dormant accounts money made available for public spending will be apportioned between England, Wales, Scotland and Northern Ireland in accordance with section 17 of the Dormant Bank and Building Society Accounts Act 2008 Act (the '2008 Act').

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2008 Act stipulates that the dormant accounts money which is available for public spending (that portion which is transferred from the Reclaim Fund to the Big Lottery Fund, the designated distributor) is to be apportioned between England, Wales, Scotland and Northern Ireland according to a 'prescribed percentage'.

4.2 The 2008 Act stipulates that the percentages are to be prescribed by an order made by the Secretary of State. Following the coming into force of the Transfer of Functions (Dormant Accounts) Order 2010 (S.I. 2010/2976) on 21 January 2011, this power has been transferred to the Minister for the Cabinet Office.

4.3 The Order is subject to the affirmative procedure (see s.17(6) of the 2008 Act).

5. Territorial Extent and Application

5.1 This instrument applies to all of the UK.

6. European Convention on Human Rights

6.1 The Minister for the Cabinet Office, Frances Maude, has made the following statement regarding Human Rights in respect of the Order:

In my view the provisions of the Order are compatible with the Convention rights.

7. Policy Background

7.1 The 2008 Act provides a scheme whereby funds in 'dormant accounts'(as defined in the Act) may be transferred to a Reclaim Fund (as identified under the Act). The Reclaim Fund manages the funds and identifies funds that may, within the constraints of the Act, be made available for public use. Any funds that are released by the Reclaim Fund will pass to a distributor, identified in the Act as the Big Lottery Fund. The funds held by the Big Lottery Fund are to be apportioned between England, Wales, Scotland and Northern Ireland for use by those administrations.

7.2 Under the Act, the apportioned funds must be used for social or environmental purposes. In addition , the English portion of the dormant accounts money must be used for the purposes prescribed in s.18 of the 2008 Act. In consultation with the Big Lottery Fund, Wales, Scotland and Northern Ireland will determine exactly how their portion of the dormant accounts money is spent. With the Prime Minister's announcement on 19 July 2010, England's portion is committed to setting up a Big Society Bank, which will be a social investment wholesaler.

7.3 As the most transparent and sustainable method of apportionment, it was expected that the available dormant account funds would be distributed between England, Wales, Scotland and Northern Ireland on a per-capita basis and, therefore, according to the Barnett formula. This is in line with normal devolved spending. The percentages prescribed in the Order have, therefore, been determined on this basis.

8. Consultation outcome

8.1 In accordance with s.17(5) of the 2008 Act, the Minister for the Cabinet Office consulted with ministers in the Devolved Administrations and the Chief Executive of the Big Lottery Fund. There were no other parties whom it was appropriate to consult on this narrow matter.

8.2 Based on advice from HM Treasury, the Minister for the Cabinet Office proposed apportioning the dormant accounts money on a per capita basis i.e. according to the Barnett formula. This was in line with the previous expectations (see, for example, paragraph 76 of the Dormant Bank and Building Society Accounts Act 2008 Explanatory Notes) and normal devolved spending.

8.3 In their response, the Big Lottery Fund agreed that the Barnett formula is the most appropriate method for apportioning the money. However, the Devolved Administrations all expressed their concerns with the formula which are principally based on the fact that it does not take into account need.

8.4 While officials and the Minister for the Cabinet Office have taken into account these concerns, HM Treasury maintains that the Barnett formula is the most transparent and sustainable method of apportionment. The consultation was completed on this basis and the Apportionment Order, therefore, reflects the latest Barnett figures derived from ONS population estimates.

8.5 No public consultations were carried out in relation to this Order as none were deemed necessary.

9. Guidance

9.1 The Department does not intend to issue any guidance alongside this instrument, as it is not considered necessary.

10. Impact

10.1 An Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

10.2 There is no financial impact on the public sector.

11. Regulating small business

11.1 This Order does not apply to small businesses.

12. Monitoring and review

12.1 There are no plans to perform monitoring or review.

13. Contact

Andy Scott at the Cabinet Office (Tel: 020 7276 0878 or email: andy.scott@cabinet-office.x.gsi.gov.uk) can answer any queries regarding the instrument.