EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES) (AMENDMENT) (NO.2) ORDER 2009

2009 No. 1389

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (RAO) to introduce new regulated activities relating to the activities of reclaim funds.

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

3.1 None

4. Legislative Context

4.1 The Dormant Bank and Building Society Accounts Act 2008 ("the Act") provides a framework whereby banks and building societies can transfer the balances of dormant bank and building society accounts to a reclaim fund. Once a transfer has been made the customer's right to repayment is exercisable against the reclaim fund.

4.2 The reclaim fund is required to retain sufficient money to meet any repayment claim, and to transfer any surplus money to the Big Lottery Fund for it to distribute for social or environmental purposes.

4.3 Section 15 of and Schedule 2 to the Act amends the list of activities in Schedule 2 to the Financial Services and Markets Act 2000 ("FSMA") to include the activities of a reclaim fund. Schedule 2 to FSMA supplements section 22 of FSMA, by describing, non-exhaustively, the sorts of activities which may be specified by the Treasury by Order as 'regulated activities', with the consequences that they are regulated by the Financial Services Authority ("the FSA").

4.4 During the passage of the Act the Government stated that it intended to specify the reclaim fund's meeting of repayment claims and management of dormant account money as regulated activities. Accordingly, this Order, which is made under section 22 of FSMA, specifies two activities of a reclaim fund as regulated activities. The first activity is that of meeting claims for repayment by holders of dormant accounts or their heirs. The second activity is the management of dormant account money received by a reclaim fund from banks and building societies.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> *'In my view the provisions of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2009 are compatible with the Convention rights.'*

7. Policy background

7.1 Following consultation in March 2007 and May 2007, the Government legislated to establish a dormant accounts scheme in the UK allowing banks and building societies to make funds available for distribution to the benefit of the community, while ensuring that the right of account holders to reclaim their money is protected.

7.2 Under the scheme banks and building societies can transfer the balances of dormant accounts to a reclaim fund. Once a transfer is made a reclaim fund assumes liability for repayment of the balances. The reclaim fund is required to hold a proportion of the balances to meet repayment claims and to send the remainder of the balance to the Big Lottery Fund for distribution for social or environmental purposes. The reclaim fund must be authorised and regulated by the FSA. The intention is to ensure that the reclaim fund manages dormant account funds prudently, so that consumers whose money is transferred to the reclaim fund can be repaid.

7.3 This statutory instrument will extend the scope of FSA authorisation and regulation to reclaim funds' activities of managing money and meeting repayment claims. The FSA will make detailed rules concerning the regulation of reclaim funds. By virtue of FSA regulation, consumers will also have access to the Financial Services Compensation Scheme in the unlikely event that the reclaim fund cannot meet a valid claim and to the Financial Ombudsman Service to resolve disputes. The effect will be to increase consumer protection.

7.4 As of November 2008, the British Bankers' Association ('BBA') and the Building Societies Association ('BSA') estimate that there may be between £250 million and £350 million of unclaimed funds in banks, and up to £130 million in building societies. These figures, however, are likely to fall as a result of ongoing industry led initiatives to reunite customers with their accounts.

7.5 There is public interest in dormant accounts, especially following the launch of an online gateway by the BBA, BSA and National Savings & Investments for customers to trace dormant accounts at www.mylostaccounts.org.uk in January 2008, which has received over a quarter of a million trace requests to date.

Consolidation

7.6 There are no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 The Government consulted on proposals for secondary legislation for a UK dormant accounts scheme in the document 'A UK Dormant Accounts Scheme: a consultation on secondary legislation', which was published in February 2009. The consultation lasted 12 weeks, in accordance with the Code of Practice for written consultations, and closed on 11 May 2009.

8.2 The consultation invited views on proposals to: extend the scope of FSA authorisation and regulation to include particular activities of reclaim funds; place a requirement on building societies participating in the scheme for smaller institutions, publicly to disclose information in line with the requirements placed on smaller banks by the Act; and extend the notice requirement applicable to banks to cover a proposed business transfer of a reclaim fund.

8.3 All respondents who commented directly on the Government's proposals were supportive of all measures, including, including the extension of the scope of FSA authorisation to include reclaim funds.

8.4 The FSA has consulted on proposals for regulating reclaim funds. The FSA's consultation paper 09/8, entitled 'Regulating Reclaim funds', was published in February 2009 and the period for consultation responses closed on 30 April 2009. It is available at http://www.fsa.gov.uk/pages/Library/Policy/CP/ 2009/09_08.shtml. The FSA will publish its response to its consultation shortly.

9. Guidance

9.1 No guidance has been published in relation to the matters contained in this order, because it is not considered that any is required in this case.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Treasury will undertake a post-implementation review of the UK dormant accounts scheme and, specifically, of the transfer of balances to the reclaim fund, the repayment of customers and the effectiveness of the banking sector's reuniting arrangements. The review will also look at the level of participation by financial institutions in the scheme. A report will be published within three years of the date when a reclaim fund is first authorised.

13. Contact

13.1 Harry Lee at HM Treasury (Tel: 020 7270 4754 or email: harry.lee@hm-treasury.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
HM Treasury	**Impact Assessment of secondary legislation relating to a dormant accounts scheme in the UK**	
Stage: Legislation	**Version:** Final	**Date:** 3 June 2009

Related Publications:
A UK Unclaimed Assets Scheme: final impact assessment, *HM Treasury*, November 2007

Available to view or download at: www.hm-treasury.gov.uk

Contact for enquiries: harry.lee@hm-treasury.gsi.gov.uk

What is the problem under consideration? Why is government intervention necessary?

In 2007, the Government introduced primary legislation to establish a dormant accounts scheme in the UK allowing funds in dormant accounts to be reinvested in society, while protecting the rights of consumers.

In cases where it is not possible to reunite account holders with their funds, a reclaim fund may accept a transfer of funds in dormant accounts from banks or building societies. A reclaim fund must be authorised by the Financial Services Authority (FSA). This Order will extend the scope of FSA regulation to include reclaim fund activity.

What are the policy objectives and the intended effects?

The Government aims to implement an UK dormant accounts scheme that protects consumers, and is transparent and fair. Extending the scope of FSA regulation to include reclaim funds will help to ensure that a reclaim fund operates under appropriate prudential regulation, so that consumers' repayment claims can be met.

What policy options have been considered? Please justify any preferred option.

Policy Option 1: Do nothing.

Policy Option 2: Bring forward a voluntary scheme with effective FSA oversight of the reclaim fund.

Policy Option 2 is the Government's preferred option because it is integral to setting up a dormant accounts scheme that is effective, transparent and fair. The Government cannot proceed to establish a scheme without enabling the FSA to regulate a reclaim fund, since this is a requirement of primary legislation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Government will undertake a post-implementation review of the UK dormant accounts scheme within three years of the date when a reclaim fund is first authorised.

Ministerial Sign-off For Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:

Date: 3 June 2009 Ian Pearson

Summary: Analysis & Evidence

Policy Option:	Description:
Do nothing	**Do not proceed to introduce secondary legislation to: enable the FSA to authorise a reclaim fund, and; equalise reporting requirements on participants in the scheme for smaller institutions**

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	None.
£ Nil	
Average Annual Cost (excluding one-off)	
£ Nil	**Total Cost** (PV) Nil

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yrs**	None.
£ Nil	
Average Annual Benefit (excluding one-off)	
£ Nil	**Total Benefit** (PV) **£ Nil**

Other **key non-monetised benefits** by 'main affected groups'

N/A

Key Assumptions/Sensitivities/Risks

Price Base Year N/A	Time Period Years N/A	**Net Benefit Range** (NPV) **£ Nil**	**NET BENEFIT** (NPV Best estimate) **£ Nil**

What is the geographic coverage of the policy/option?				N/A
On what date will the policy be implemented?				N/A
Which organisation(s) will enforce the policy?				N/A
What is the total annual cost of enforcement for these organisations?				N/A
Does enforcement comply with Hampton principles?				N/A
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				N/A
What is the value of changes in greenhouse gas emissions?				N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ N/A Decrease of £ N/A **Net Impact** **£ N/A**

Key: **Annual** **(Net) Present Value**

Summary: Analysis & Evidence

Policy Option:	Description:
Implement a voluntary scheme	**Proceed to introduce secondary legislation to: enable the FSA to authorise a reclaim fund, and; equalise reporting requirements on participants in the scheme for smaller institutions**

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ Nil	0
Average Annual Cost (excluding one-off)	
£ Nil	

Description and scale of **key monetised costs** by 'main affected groups'

None. Please see evidence base for costs not directly generated by legislation.

Total Cost (PV) **£ Nil**

Other **key non-monetised costs** by 'main affected groups'

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BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ Nil	0
Average Annual Benefit (excluding one-off)	
£ Nil	

Description and scale of **key monetised benefits** by 'main affected groups'

None. Please see evidence base for benefits not directly generated by legislation.

Total Benefit (PV) **£ Nil**

Other **key non-monetised benefits** by 'main affected groups'

Key Assumptions/Sensitivities/Risks This legislation is enabling and generates no direct costs or benefits to industry or consumers. However, a successful scheme will generate costs and benefits and secondary legislation is necessary to the operation of the scheme.

Price Base Year N/A	Time Period Years N/A	**Net Benefit Range** (NPV) **£ Nil**	**NET BENEFIT** (NPV Best estimate) **£ Nil**

What is the geographic coverage of the policy/option?				N/A
On what date will the policy be implemented?				May 2009
Which organisation(s) will enforce the policy?				N/A
What is the total annual cost of enforcement for these organisations?				Unknown
Does enforcement comply with Hampton principles?				N/A
Will implementation go beyond minimum EU requirements?				N/A
What is the value of the proposed offsetting measure per year?				N/A
What is the value of changes in greenhouse gas emissions?				N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro **Unknown**	Small **Unknown**	Medium **Unknown**	Large **Unknown**
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ N/A Decrease of £ N/A **Net Impact** **£ N/A**

Introduction

This impact assessment draws on the impact assessment published alongside the Government's response to previous consultations on dormant accounts in November 2007[1]. This earlier impact assessment provided a detailed analysis of the overall costs and benefits of seeking to establish a dormant accounts scheme in the UK. The introduction of statutory instruments, following primary legislation enacted last year, is a further step towards this goal.

The FSA has consulted separately on detailed proposals for regulating reclaim funds, including: the authorisation process, related fees and charges, regulatory and reporting requirements; supervisory arrangements; managing reclaims; and, arrangements for complaints and compensation. The FSA's consultation paper 09/8, entitled *Regulating Reclaim Funds*, was published in February 2009 and the consultation period closed on 30 April 2009.[2]

Government intervention and options

Background

The Government's overarching objectives are to: ensure an on-going legal right for account holders to reclaim their money at any time; wherever possible, see that account holders are reunited with the assets that are rightfully theirs; and adopt a proportionate regulatory approach to establish a fair, transparent and effective dormant accounts scheme. These key principles – reuniting, consumer protection and better regulation – are integral to the scheme.

Secondary legislation

The Dormant Bank and Building Societies Act 2008 received Royal Assent on 26 November 2008. This Order will enable the FSA to regulate certain activities of a reclaim fund; separate regulations will establish reporting requirements for building societies taking advantage of the option available to small and locally-based institutions, identical to the requirements for small banks; and extend the notice requirement applicable to banks to cover a proposed business transfer of a reclaim fund.

The Act amends Schedule 2 of the Financial Services and Markets Act 2000 (FSMA) in order to include the activities of a reclaim fund in the list of activities that may be specified as 'regulated activities' for the purposes of FSA regulation. The Treasury accordingly intend to specify activities of a reclaim fund by amending the Regulated Activities Order ('the RAO') to FSMA. In particular, the Government will amend the RAO to include the reclaim fund's activities of meeting repayment claims and managing dormant account funds. This legislation is necessary to enable the FSA to authorise and regulate these activities.

Intended effects

The Government aims to implement an effective UK dormant accounts scheme that protects consumers, and is transparent and fair. Extending the scope of FSA authorisation to include reclaim funds will ensure that a reclaim fund operates under appropriate prudential regulation, so that consumers' repayment claims can be met.

Policy options

The following policy options were considered:

Policy Option 1 – Do nothing; and

Policy option 2 – Bring forward a dormant accounts scheme with effective FSA oversight of the reclaim fund.

Option 1

[1] This document is available at www.parliament.uk/deposits/depositedpapers /2007/DEP2007-0067.pdf.

[2] Available at http://www.fsa.gov.uk/pages/Library/Policy/CP/ 2009/09_08.shtml

The Government would not proceed with the secondary legislation outlined above.

Without bringing forward secondary legislation to extend the scope of FSA regulation to include reclaim funds, it would not be possible to set up a reclaim fund: the Act defines a reclaim fund, in part, as an institution that must be authorised by the FSA.

Option 2

The Government brings forward a dormant accounts scheme with effective FSA oversight of the reclaim fund.

Option 2 is the Government's preferred policy, because the proposed secondary legislation is integral to establishing an effective scheme that is transparent and fair.

Analysis and Evidence

The statutory instruments to be laid before Parliament do not compel banks and building societies to make dormant account funds available for investment in the community, and so no direct costs or benefits for main groups are generated. However, secondary legislation will facilitate a UK dormant accounts scheme and it is expected that this scheme, once established, will generate costs and benefits affecting consumers, banks and building societies taking part in the scheme, and the reclaim fund.

The FSA has assessed the costs and benefits imposed on the reclaim fund in greater detail in its separate consultation document.

Costs

FSA regulation

By bringing some of the reclaim fund's activities into the list of regulated activities that the FSA must regulate, the proposed secondary legislation will directly impose costs on the FSA.

As set out in its separate consultation, the FSA proposes to meet its set up costs through an increase of 0.4% in the annual fees paid by banks and building societies eligible to participate in the scheme.

FSA authorisation will place costs on a reclaim fund. In particular, the FSA expects to charge a £25,000 authorisation fee. The FSA's regulatory framework will also place compliance costs on the reclaim fund. The FSA estimates these incremental compliance costs as being no more than 5% of total costs.

Assuming that the fees charged by the FSA and the compliance costs imposed on the reclaim fund accurately reflect, in aggregate, the value of the regulatory framework, these payments are effectively transfers with a net cost (net benefit) of zero.

Additionally, the reclaim fund will enter the Financial Services Compensation Scheme (FSCS) and the compulsory jurisdiction of the Financial Ombudsman Service (FOS) and will therefore be subject to levies payable to each. Levies payable to the FSCS and FOS will be a fraction of those payable by a deposit-taking institution of similar size, in order to reflect the dormant nature of the accounts.

Assuming that the levies charged by FSCS and FOS accurately price the value of services offered to customers of the reclaim fund, these payments are effectively transfers with a net cost (net benefit) of zero.

All costs stated are conditional on the regulatory framework introduced by the FSA. The FSA intends to publish its final rules governing the operation of reclaim funds shortly.

Benefits

The benefits of secondary legislation accrue to consumers and third sector organisations.

The key benefits will accrue to third sector organisations and, ultimately, the communities they serve, through the distribution, by the BIG Lottery Fund, of dormant account funds not needed to meet reclaim risk.

The benefit of legislating for the FSA to oversee the reclaim fund's operations will accrues to consumers. This reflects the protection they receive from FSCS and FOS, and that the prudential regulation of the reclaim fund to help to ensure that it can meet any repayment claims.

The scheme could not be taken forward without a reclaim fund authorised by the FSA. All of the benefits of introducing a voluntary scheme outlined in the final assessment also result from the passage of the statutory instruments outlined above.

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No