
STATES OF JERSEY



PUBLIC CONSULTATION ON PROPOSED DORMANT BANK ACCOUNTS (JERSEY) LAW 201-

**Presented to the States on 7th February 2013
by the Minister for Economic Development**

STATES GREFFE

Summary of Responses

Public Consultation on proposed Dormant Bank Accounts (Jersey) Law 201-

5 February 2013

OVERVIEW

This paper reports on the responses received by the Economic Development Department on the Public Consultation on a proposed Dormant Bank Accounts (Jersey) Law 201-.

The Economic Development Department would like to thank all respondents for the time they have taken to consider the issues raised by this consultation and for the feedback provided. In order to respond most efficiently the Economic Development Department does not propose to reply individually to all respondents, but invites any respondent or interested party to make contact should there be an area requiring further discussion.

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SUMMARY OF RESPONSES

Respondent's comment	Departmental response
<p>Is the suggested test for dormancy appropriate, i.e. that there should be no transactions or communication from the account-holder for 15 years? Should different dormancy periods apply to different sorts of accounts?</p> <p>The majority of respondents were in favour of having a dormancy period of 15 years for all types of account. However, a significant proportion of respondents preferred a dormancy period of 10 years, principally on the grounds that this would be in line with bank record-keeping requirements. One respondent suggested an 8 year dormancy period would be sufficient. One of the respondents who backed the 15 year period preferred this not to be retrospective. One respondent expressed a general concern regarding fixed accounts.</p> <p>What procedures should be used to attempt to contact the holders of accounts before classifying them as dormant?</p> <p>Respondents agreed that banks should attempt to contact account holders before classing accounts as dormant, but did not generally express a view as to how this should be done, e.g. post, advertisement in newspaper. One respondent agreed that banks should write to customers warning them that their account is about to be made dormant unless post has been previously returned.</p> <p>Should a central search facility for dormant accounts be set up? If so, who should run it and how should it be financed?</p> <p>Respondents were evenly split on whether there should be a central search facility to help customers identify bank accounts that may have fallen dormant. Several respondents raised concerns with regard to security, in particular the danger of fraudulent claims if such a search facility is introduced. One respondent did not think it would be feasible to set up such a facility in a small jurisdiction such as Jersey because of the costs involved.</p>	<p>On balance, the Department considers that a dormancy period of 15 years would be appropriate for all accounts (current/savings and sterling/non-sterling), in line with the UK scheme. It is reasonable to expect banks to be able to identify accounts that have been dormant for 15 years from their current records, so there should be no difficulty with the 15 year period being retrospective. For fixed term accounts, the dormant period will not commence until the fixed term has expired.</p> <p>It is considered that banks should be required to take a reasonable and proportionate approach to reuniting customers with accounts. The average balance of dormant accounts in the UK is relatively small so in most cases a simple letter to the customer's last known address would be sufficient. In parallel to reunification efforts on the part of the banks, a planned publicity campaign will raise awareness of the issue of dormancy and is likely to prompt at least some customers with dormant accounts to take a proactive approach to reunification.</p> <p>There would appear to be little demand from resident depositors for a central search facility and, on balance, the Department is doubtful whether the costs of implementing such a scheme could be justified in a small jurisdiction such as Jersey. Whereas those seeking to carry out legitimate searches can currently make their own personal inquiries and can seek assistance from existing industry bodies, a central search facility would require a complex and costly identity-verification procedure and would be open to abuse from both fraudsters, bounty-hunters and time-wasters.</p>

Should the reclaim fund be based within government (e.g. Treasury and Resources) or should it be an independent body? If the reclaim fund is to be an independent body, how should the trustees/commissioners be appointed? Should the distribution of the money be carried out by the reclaim fund or by a separate body?

A small majority of respondents who commented on this aspect of the proposal were in favour of the reclaim fund being administered by a non-governmental independent body; one suggested the Crown should administer the fund and one suggested government administration. Two respondents suggested that Community Savings & Credit Ltd. should administer the fund and one respondent suggested that the Association of Jersey Charities should be responsible for distributing funds.

There are advantages and disadvantages in the scheme being administered by an independent body or bodies. However, a major factor is that it is likely to cost more to be administered by external professionals than by the States. The requirement for transparency and the rigorous standards that must be applied to the financial management of the fund would necessitate experts being hired. Further, careful thought will have to be given to the amount disbursed and the amount retained to meet liability issues should depositors wish to reclaim large amounts in the future.

As the amounts of ongoing dormant deposits may not justify the increased costs, weighing up these factors, the Department favours the banks themselves administering the test of whether accounts are dormant, a central administration source being appointed which is likely to be the Department in the same way that the Lottery funds are administered, Treasury investing the funds prior to disbursement and existing bodies who already give out grants being used to administer the distribution of grants.

Should the scheme be voluntary or compulsory?

A large majority of individual respondents were in favour of the scheme being compulsory, mainly because it was felt that banks would be unlikely to participate unless the scheme was compulsory. Institutional respondents preferred a voluntary scheme, in line with the UK. One of these respondents suggested that the large banks would participate for reputational reasons and that only a handful of these need participate for most of the sector to be covered.

Given that Ireland now has a compulsory scheme, and other jurisdictions including Guernsey and Isle of Man are moving towards a compulsory scheme, it would also appear to be appropriate to bring in a compulsory scheme. It is clearly appropriate that when banks leave the island they must be compelled to pass over all dormant accounts to the scheme providing that the relevant data is in an acceptable form. It would be appropriate to mandate that records are held by an agent in the jurisdiction for a 10 year period – the period for which a company can be reinstated.

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? If claims are made to banks, 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?

All respondents bar one who addressed this issue

On the transfer of a dormant account to the

were in favour of the proposal for customers to continue dealing with the bank, even after the account has been made dormant and the balance transferred to the reclaim fund. Only one respondent commented on the proposed mechanism of 'netting' reimbursements against payments due to the fund, and this respondent was in favour of the proposal. A different respondent commented on timing and felt that banks should pay out customers immediately.

reclaim fund, the financial institution will be legally released from any liability to repay the dormant bank account holder. That said, it is considered that customer confidence in the scheme would benefit greatly from permitting customers to continue dealing with their bank as if dormant accounts had never been transferred to the reclaim fund.

The legislation will therefore provide that following the transfer of a dormant deposit to the reclaim fund, the transferring bank will act as the scheme's agent in: (i) continuing to act as the point of contact with the customer; (ii) holding account records; (iii) reimbursing the customer (and later recovering from the reclaim fund); and (iv) handling any complaints. In the event of a customer reclaiming a deposit that has been transferred to the reclaim fund, the bank will therefore be responsible for calculating the amount to be repaid, including any interest due, and paying this immediately to the customer (as soon as the bank is satisfied that the claim is valid).

This approach will minimise the administrative burden on the scheme and will also avoid confidentiality issues for participating banks.

Are any interim measures necessary to preserve Jersey's position in the light of the UK Dormant Bank and Building Society Accounts Act 2008? If so, what measures would be appropriate? Should the scheme be introduced in phases?

Those respondents who addressed this issue were in favour of the proposal to introduce an interim scheme as soon as possible in order to prevent funds that would be transferred to the reclaim fund in Jersey being transferred to the corresponding UK scheme instead.

Following feedback from the banking industry, it is considered that the publication of the consultation has in practice acted as sufficient notice to the banking industry of Jersey's intention to introduce a dormant accounts scheme. Given the generally accepted view amongst banks with a multinational presence that dormant deposits held in a particular jurisdiction should be used to benefit that jurisdiction, it would appear to be unnecessary to introduce an interim scheme.

Should the money raised be used for the benefit of specific good causes? If so, which ones? If the money should be used for charity generally, on what basis should the distributor decide how to allocate the money available?

The comments as to what use the funds should be put were numerous and varied. In general, respondents felt that the funds should be applied to assist 'good causes' in Jersey. Among the many specific suggestions were: local good causes in general; members of the Association of Jersey Charities; arts and heritage; acquisition of areas of natural beauty; Jersey Hospice; assistance for first time home buyers; and economic assistance for the people of Sark.

There was a wide consensus that funds should be applied to assist 'good causes' in Jersey, but beyond that there was little agreement amongst respondents as to which specific good causes should benefit. The Department considers that in order to ensure complete independence and the avoidance of the appearance of patronage, the distribution of funds should be to a body or bodies with a clear structure and criteria for making distributions to appropriate causes.

As in other jurisdictions the proceeds would go to a broader variety of causes than simply charitable – for example social and environmental causes. It is considered that the proceeds raised could be split between charities, heritage, culture and public participation in sport, the categories which were flagged up by respondents and which match criteria used in other jurisdictions. Discussions will be held with relevant bodies such as the AJC in order to see whether they would also be interested in administering any funds which are produced by this method or whether additional bodies should be considered.

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?

Most respondents were in favour of a pre-implementation publicity campaign in Jersey but doubted how effective such a campaign could be abroad, e.g. in the UK.

There is a good case for having a clear and consistent publicity campaign in Jersey prior to the implementation of a dormant accounts scheme. This would be aimed at raising awareness of the impending introduction of the scheme and at educating customers in the best way to seek reunification with their dormant accounts. The publicity campaign would run in parallel to banks' efforts to reunite dormant accounts with customers.

What factors should be taken into account in assessing applications for grants? Should grants be made for running costs or for capital expenditure or for both? Should there be a requirement for matching contributions?

Two respondents commented that there should be no requirement for organisations to match contributions from the reclaim fund. One respondent felt that funding should be restricted to capital expenditure, i.e. not running costs.

The Department considers that in order to ensure complete independence and the avoidance of the appearance of patronage, the distribution of funds should be given to bodies with a clear structure and criteria for making such distributions to good causes.