



AN BILLE UM CHUNTAIS DHÍOMHAOINE, 2001
DORMANT ACCOUNTS BILL, 2001

EXPLANATORY MEMORANDUM

Introduction

The purpose of this bill is to provide for a scheme to transfer dormant funds in banks, building societies and the Post Office Savings Bank to the care of the State, while guaranteeing a right of reclaim to those funds. It further provides for the introduction of a scheme for the disbursement, for charitable purposes, or purposes of societal and community benefit, of funds which are not likely to be reclaimed. The Bill also proposes an amendment to the State Property Act, 1954, in relation to the Intestate Estates Fund.

Section 1 is the short title of the Bill, and provides for the Minister for Social, Community and Family Affairs setting the date for commencement of the Act.

Section 2 is an interpretation section which defines certain terms used in the Bill.

Section 3 is a standard provision giving the Minister the power to set an establishment day.

Section 4 provides authority for the Minister to make Regulations and Orders in relation to anything in the Act; in particular, if such is required to give full effect to the Act. It specifically provides that if there are any difficulties in applying the provisions of the Act to a particular class of account or institution, within the first three years of operation of the Scheme that the Minister may, by Regulation, do whatever is necessary to bring the Act into operation. The Minister must consult with the Minister for Finance if he/she proposes to make any Regulations.

Section 5 provides that the expenses incurred by the Minister in the administration of the Act shall be met out of moneys provided by the Oireachtas. It further provides that the Minister may, during the first two years from the establishment day, and with the consent of the Minister for Finance, advance to the Dormant Accounts Fund, out of moneys provided by the Oireachtas, such sums as he/she may determine are required to meet the expenses of the Dormant Accounts Fund Disbursement Board, in the performance of the Board's functions.

Section 6 sets out the levels of fines to be applied for summary and indictable offences, and provides that the Minister may bring summary proceedings in respect of offences under the Act. It further provides that a person convicted of an offence under this Act shall

meet any costs and expenses incurred by the Minister in the course of the proceedings.

Section 7 provides that an account shall be deemed dormant unless the account holder effects a transaction on the account subsequent to its being identified as dormant.

Section 8 provides that the Act applies to dormant accounts held at the institutions specified in *Part 1* of the *Schedule*, other than those accounts specified in *Part 2* to the *Schedule*.

Section 9 provides that the Minister, following consultation with the Central Bank of Ireland, and with the permission of the Minister for Finance, may make Regulations to extend the scope of the Scheme to other classes of account, account holder and/or institution. It further provides that the Minister may also, by Regulation, modify a number of provisions in the Act.

Section 10 sets out the obligations of the institutions in relation to notifying holders of dormant accounts.

Section 11 provides that where an institution has accounts valued at below a certain threshold, or accounts deemed “non-correspondence”, it will be obliged to publicly notify account holders of such, in two or more national daily newspapers, and in *Iris Oifigiúil*. The institution will also have to place copies of the notice in its place of business and in any relevant code of conduct.

Section 12 provides that where no transaction has been effected on an account in the given time, the institution shall transfer the moneys to the Dormant Accounts Fund not later than 30 April each year, commencing 2003. In the case of POSB accounts and products, the Minister for Finance shall cause the moneys from the POSB Fund, or the Central Fund as the case may be, to be transferred to the Dormant Accounts Fund. It further provides that each institution will make a statement to the NTMA of the total amounts it transfers, and relating to how many accounts; nil returns will also be required from financial institutions, where applicable. Where an institution fails to transfer moneys, these shall be a simple contract debt owing to the Minister.

Section 13 provides that where an institution has had its licence revoked, suspended or withdrawn, or it is in liquidation, receivership or subject to examinership, or has received certain directions from the Central Bank of Ireland, no further moneys shall be transferred from that institution, to the Dormant Accounts Fund, until such time as it is entitled to do so again.

Section 14 provides that each institution shall keep a “Register of Dormant Accounts”, containing the particulars of the holders of those accounts, and the date on which the moneys were transferred to the Fund.

Section 15 provides that the Minister may, at a future date, make Regulations for disclosure of certain information in relation to the accounts, for statistical purposes.

Section 16 provides that the rights of share account holders, in building societies, are unaffected by the transfer of moneys in their accounts.

Section 17 provides that the NTMA will establish the “Dormant Accounts Fund”, and be responsible for management and control of

such. The Fund will consist of a “reserve account”, moneys in which shall be applied to meet repayments to claimants, as well as to fees, costs and expenses of the NTMA and the Inspectors on foot of this Act, and an “investment and disbursements account”. It is further provided that should the reserve account be depleted at any time, moneys will be paid into that account from the investment and disbursements account. If the investment account is also depleted, so that it cannot be used to service the reserve in these circumstances, advances will be made from the Central Fund, to the reserve account, such advances being repayable once there are surplus moneys in the Fund again.

Section 18 provides that the NTMA shall prepare, annually, an investment plan for the Fund, having regard to the Board’s disbursement plan, and any guidelines/directions given by the Minister in relation to such. The Section sets out the products in which the NTMA may invest the moneys.

Section 19 sets out the procedure for the owner of dormant funds making a reclaim, the interest to be applied to moneys that have been transferred, and how long the owner can expect to wait to obtain his/her moneys. It further provides that where an institution has been wound up, the Central Bank shall take control of that institution’s Register.

Section 20 provides that each institution shall furnish an annual “Certificate of Compliance”, signed by a duly authorised officer of the institution, to the Minister. This certificate will be in a prescribed form.

Section 21 is a standard interpretation clause for this Chapter of the Act, which defines certain terms used in this Chapter.

Section 22 provides that the Minister may authorise one or more persons to be “Inspectors” for the purposes of checking compliance by the institutions, with the provisions of the Act.

Section 23 provides that an Inspector has the power to inspect, and make inquiries about records relating to dormant accounts held by an institution. The section gives the Inspector certain standard powers in relation to entering premises and requesting the help of any officer therein for the purposes of his/her inspection.

Section 24 provides that where the Inspector encounters non-compliance on the part of any of the institutions, or a breach of any of the provisions of the Act, he/she shall submit a report of his/her findings to the Minister. The report shall not identify any of the account-holders, except where the Inspector encounters fraud or under/non-payment of relevant moneys to the Fund.

Section 25 provides that any of the Inspector’s utterances shall be privileged.

Section 26 provides an indemnity for the institutions in so much as they must disclose certain information to the Inspector, where that disclosure is done in good faith.

Section 27 provides that, on foot of the Inspector’s report, the Minister may issue directions in writing to an institution, compelling it to comply with provisions of the Act and/or to rectify a material defect with that institution’s systems regarding dormant accounts.

Section 28 provides for an amendment to section 36 of the State Property Act, 1954, to allow the Minister for Finance to pay moneys from the Intestate Estates Fund Deposit Account, into the Dormant Accounts Fund.

Section 29 provides that should moneys in the Intestate Estates Fund Deposit Account be insufficient to meet the liabilities due thereunder, the Minister for Finance may apply to the NTMA for repayment to that account, from moneys transferred from it to the Dormant Accounts Fund.

Section 30 provides for establishment of the Dormant Accounts Fund Disbursement Board (the Board).

Section 31 provides that the functions of the Board are to prepare a plan for disbursement of moneys and to report to the Minister on such.

Section 32 provides for nine members of the Board, to be appointed by the Minister, based on the guidelines given in this section. It further provides for the terms of office of those members.

Section 33 sets out the criteria for disqualification of Board members, and authorises the Minister to remove Board members in certain circumstances.

Section 34 provides that the Minister can appoint a member to the Board to fill a casual vacancy.

Section 35 provides that the Chairperson of the Board shall hold office for five years, and details certain terms of his office.

Section 36 sets out the procedure for meetings of the Board, and provides that a quorum for meetings is five members, unless the Minister directs otherwise. It further provides that the Minister shall provide such administrative support to the Board as he/she deems necessary.

Section 37 specifies who does not qualify for membership of the Board.

Section 38 provides that the Board may, subject to prior approval, or at the request of the Minister, engage consultants or advisers, the fees for which are to be met out of the reserve account.

Section 39 provides that Board members must disclose any interests they have in matters to be decided by the Board, and absent themselves from any decision thereon. It further provides for a casting vote of the Chairperson, if that situation arises.

Section 40 provides that a Board member, or any consultant/adviser employed by the Board must not, unless authorised by the Board, disclose confidential information obtained as a result of carrying out his/her duties.

Section 41 provides that the Board shall prepare a plan for disbursement of moneys from the Fund, such plan to include the Board's objectives and priorities for funding, and any directions/guidelines given by the Minister in relation to such.

Section 42 sets out the purposes to which disbursements may be applied.

Section 43 provides that the Minister shall, following consultation with the Board, make Regulations in relation to disbursements of moneys.

Section 44 provides that when the Board gives a direction to the NTMA to make a disbursement, it shall have regard to its own disbursement plan and shall, if proposing to make a disbursement in excess of €300,000, get prior consent of the Minister before giving a direction to the NTMA. It further provides that the disbursements shall be on such terms and conditions as may be determined by the Board, with the approval of the Minister, given with the consent of the Minister for Finance.

Section 45 provides that the NTMA shall make an annual report to the Board on the details of moneys in the Fund. It further provides that the Board shall, annually, make a report of its activities during the previous financial year, to the Minister.

Section 46 provides that the NTMA shall keep its accounts, in relation to the Fund and in relation to its management thereof, in a manner approved of by the Minister for Finance. These accounts are to be submitted to the C&AG for audit.

Section 47 provides that the Chief Executive of the NTMA shall account to the PAC for the functions of the NTMA under this Act, and that the chairperson of the Board shall account to the PAC for any matters relating to the functions of the Board under this Act.

Section 48 provides that where an institution transfers moneys to the Fund, or notifies the NTMA of a claim for repayment, the institution shall not identify the account holder. It further provides that where the Minister for Finance transfers moneys to the Fund from the Intestate Estates Fund Deposit Account, or applies for repayment of any of those moneys from the Fund, he/she shall not identify a deceased person or a person rightfully claiming those moneys.

Part 1 of the *Schedule* lists the institutions to which the Act applies.

Part 2 of the *Schedule* lists accounts which are to be exempt from the scope of the Act.

*An Roinn Airgeadais,
Bealtaine, 2001.*