

Mr Leo Bollins

Clerk to the Joint Committee on Rural and Community Development

Houses of the Oireachtas

Leinster House

Dublin 2, D02 XR20

Your Ref: RCD-i-030

January, 2019

Re: Consultation on the law relating to Abandoned Safekeeping Deposits in Banks etc.

Dear Mr Bollins,

I wish to acknowledge your letter of 2nd November last.

Lead Department

As you state, the lead Department in relation to the Dormant Accounts Act is the Department of Rural and Community Development, so it would be most appropriate for that Department to lead on any amendments to the Act. The Department of Finance will make observations on possible amendments to the Dormant Accounts Act as part of the Government decision making process.

Data Availability on Safekeeping Deposits

In relation to the specific matter of safekeeping deposits in banks, the Department of Finance has contacted the Central Bank for further information, which is awaited. However, the Department of Finance's initial analysis is that safekeeping deposits (including safety deposit boxes) are not a regulated activity and as such, neither the Department nor the Central Bank, will have detailed information on these activities. Therefore, the Department will be restricted in the assistance that it can provide to the Joint Oireachtas Committee. If the Committee decides to pursue the matter further, it may be of assistance for the Committee to contact the Banking and Payments Federation Ireland, which could coordinate a response from its members in terms of the numbers of dormant safekeeping deposits in existence within their operations.

Policy inconsistency between Dormant Accounts and Dormant Safekeeping Deposits

At an overall level, it is important to clearly set out that there are very considerable differences between banks having access to the cash in dormant accounts and maintaining safekeeping deposits. The existence of dormant accounts in banks is generally of significant benefit to banks as these dormant accounts offer perpetual liquidity to the bank, which is a very significant benefit especially in periods of financial stress. Whereas, the maintenance of dormant safekeeping deposits are generally a cost to banks as they must incur the cost of maintaining the deposits for no benefit.

The benefits arising to banks (as opposed to the State) from dormant accounts was a key rationale for the Dormant Accounts Act, which brought dormant accounts under the management of the State for use in supporting community development projects but also ensured repayment of dormant accounts if the owner was subsequently identified. However, the inverse of that policy rationale would apply for safekeeping deposits, which are a significant cost to the holder, and would also be a cost for the State if they were to be taken into State ownership.

Therefore, the Committee may wish to consider alternative statutes to allow the State access to safekeeping deposits in order to identify and take control of assets that could be considered to be key historic artefacts, and to dispose of those items that are ruled as being worthless or already destroyed. Such an approach would likely provide a stronger public interest rationale and legal basis to justify what could be considered the effective confiscation of private property.

Considerations of bringing Safekeeping Deposits in banks under Dormant Accounts Act

There are a number of interlinked and other factors that require careful consideration in relation to any proposal to bring assets in safekeeping deposit boxes within the remit of the Dormant Accounts Fund, including:

- Limited information on the number and contents of Safekeeping deposits in banks, which makes the preparation of a cost – benefit analysis on any such proposal difficult;
- The potential contents of these deposits and their existing condition, which may be very poor given the passage of time;
- The cost implications for the State from such an extension of the Dormant Accounts Act (or other related Acts), which would involve the State having to cover the costs of processing multiple asset classes and also subsequent special storage costs;
- The extensive transfer of costs/risks from the private banking sector to the State (as set out above in terms of the inconsistency with dormant accounts);
- The requirement for the State to hold assets for potential future claimants, which will be virtually impossible given the individual and unique assets that may be uncovered; and
- Complex legal considerations such as the time periods that would be covered and the legal powers required to allow State actors to enter and seize private property.

Initial Conclusion

As stated above, the relatively limited information on the proposal make it very difficult for the conducting of the necessary cost – benefit analysis. However, an initial high level consideration of the above issues would indicate that the existence of definite costs and risks as compared to very uncertain benefits make it highly unlikely that such a proposal would pass a full ex-ante cost benefit appraisal, which would have to be undertaken by the policy proposer.

As set out above, it may be best to consider whether the public interest can be best set out under alternative statutes that would seek to take key historic artefacts into State care. Nevertheless, such a proposal would also require a cost – benefit analysis that may not support the policy.

I hope the above analysis is of use to the Committee and I do not think that an appearance of the Department of Finance before the Joint Committee will be of particular assistance. Nevertheless, if the Committee sought to pursue the matter, Department officials could attend the Joint Oireachtas Committee alongside the lead officials from the Department of Rural and Community Development.

Yours sincerely,

Derek Moran

Secretary General