

Abandoned Safekeeping in Ireland

Overview of the current legal position on this property and the potential to capture these items under the Dormant Deposit legislation

Prepared for

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1.0 Purpose

Following a meeting¹ with the Eamon O’Cuiv on the 7th March 2018 it was agreed that the author would prepare a discussion document to initiate dialogue on the relevance of the Dormant Deposit Act 2001 to the issue of abandoned property held in safekeeping by Irish banks.

This document covers...

- 1.0 Purpose
- 2.0 Origin of abandoned property held in safekeeping
 - 2.1 Origin
 - 2.2 Nature of the property
 - 2.3 Legal position
 - 2.4 Difficulties identifying owners and the States claim to this property
 - 2.5 Categorising the property
- 3.0 Application of the Dormant Deposit Acts
 - 3.1 Select Committees debates 2001
 - 3.2 Phased approach

¹ Meeting arranged and attended by [REDACTED]

2.0 Origin of abandoned property held in safekeeping

2.1 Origin

Irish banks have facilitated the safekeeping of property as part of their original banking services on a gratuitous basis from inception. Many of the items deposited between the early 1800's and the mid 1980's were never reclaimed and now lie abandoned in bank vaults throughout the country. Banking records and statistics relating to this property are largely non-existent however best estimates suggest that the number of items would run to tens of thousands.

2.2 Nature of the property

Items were accepted into safekeeping custody in a concealed state and remain concealed today. There is sufficient general and specific knowledge of items to suggest that the property falls into the following broad categories:

Legal documents – Wills, title deeds

Other written papers – documents simply marked “to be opened on the death of X”

Currency

Gold bullion / Krugerrand

Paintings

Jewelry

Antiques

Weapons

2.3 Legal position

Initially, items were deposited on an informal and undocumented basis. Banks did adopt more formal safekeeping practices over time however much of the administration was casual and information on ownership rested on local knowledge e.g. an official might use initials to denote who owned a package; once the official retired, left or died this knowledge evaporated.

Irrespective of whether the custodial arrangements were formal, informal, remunerated or gratuitous, the legal relationship remains that of a bailment contract. Banks have voluntarily assumed the role as bailee under a relationship of bailment with the customer (bailor) in respect of this property.

Whilst banks retain possession of this property, the legal ownership remains with the individual who deposited it, their Estate or with the Irish State.

2.4 Difficulties identifying owners and the States claim to this property

The efflux of time coupled with the poorly documented nature safekeeping arrangements thwarts a banks ability to prove (or deny) ownership rights. In the absence of formal records, legal opinion would suggest that banks have a right to open this property to assess if the contents can point to correct legal ownership.

This property remains the property of the original owner or their Estate. However, property that cannot be traced back to an original or beneficial owner vests in the State under various statutory instruments.

- i. The Supreme Court case of *Webb v. Ireland* [1988 IR353] introduced the concept of Treasure Trove which although severely restrictive in its application, would give the State ownership of certain types of property.
- ii. The more robust instrument would be the National Monuments (Amendment) Act 1994 which grants ownership to any item of national interest that falls within a very broad definition
- iii. The Succession Acts presents another potential line of State ownership in situations where an individual dies intestate

2.5 Categorising the property

The banks should be able to:

1. Identify deposits that are supported by sufficient records to identify a living or beneficial owner, and
2. Identify deposits where the records are insufficient to establish ownership.

The property identified in the second category represents the property which is potentially owned by the State.

There is no statutory provision that compels any bank to undertake such an exercise and therefore Government would have to legislate to create the obligation.

3.0 Application of the Dormant Deposit Acts

3.1 Select Committee debates 2001

Safety Deposit Boxes were explicitly excluded from the original Dormant Deposit legislation ‘for the good and obvious reason that they are not cash instruments’. This quote from Charlie McCreevy was taken from the Select Committee debates on the Dormant Deposit Bill 2001. The full extract is attached, marked Appendix (i).

The ultimate legislation was drafted with a reasonably narrow definition of an account...

Interpretation

- 2.—(1) In this Act, except where the context otherwise requires— “account” includes—
- (a) a deposit account, share account or current account, by whatever name called, that is personal, corporate, charitable, resident or non-resident,
 - (b) a deposit receipt,
 - (c) a petty balances account,
 - (d) a savings certificate,
 - (e) a savings bond,
 - (f) an amount payable to a person under an instalment savings scheme,
 - (g) a fixed deposit, and
 - (h) an account prescribed under [section 9](#) ;

Section 9 would seem to grant sufficient power for Section 2 to be amended to include this property.

Extension of application of Act.

9.—(1) The Minister, having regard to the purposes specified in *subsection (3)*, following consultation with the Central Bank and subject to the consent of the Minister for Finance, may make regulations providing for the application of this Act and instruments made under this Act, with and subject to any modifications that may be specified in the regulations, to accounts (including accounts other than those specified in [section 2 \(1\)](#)) that are held by any class or classes of person and at any class or classes of institution specified in the regulations.

(2) Without prejudice to the generality of *subsection (1)*, the modifications, if any, may relate to any of the following matters:

- (a) the dormancy period;
- (b) the notification procedure set out in *Chapter 2*;
- (c) the transaction, as defined in [section 2 \(1\)](#), required to be effected in relation to an account for the purposes of this Act;
- (d) the transfer of moneys to the Fund under [section 12](#) ;
the keeping of a register under [section 14](#) and the particulars required to be entered therein;
- (e) the disclosure of information for statistical purposes under [section 15](#) ;
- (g) the repayment of moneys under *Chapter 5*;
- (h) any other matters that may appear to the Minister to be necessary for carrying the regulations into effect.

- (3) The Minister may make regulations under *subsection (1)* for the following purposes:
- (a) consumer protection;
 - (b) the proper and orderly regulation of the financial services industry;
 - (c) to facilitate the accessing or identification by persons of accounts or moneys to which they are entitled;
 - (d) to reduce the administrative and financial burden on persons or institutions of maintaining dormant accounts.

Deposits found to contain cash instruments are capable of being dealt with in a similar fashion to that currently provided for under the existing legislation however more consideration needs to be given to the methodology of dealing with material of more historic or cultural value.

3.1 Phased Approach

The quantum of property in scope is hugely significant and there is an opportunity to test the legislation by segmenting the property chronologically in the first instance and then by reference to the standards of documentation supporting the items. The initial legislation could place obligation on the banks to deal with property that is over, say 100 years old.

Specifically, the Author recommends that the legislation be amended to place phased obligations on the banks as follows

Phase I

Banks need to catalogue the items they currently hold in safekeeping and produce a report detailing which property is supported by any form of administration records and which property is unsupported. This report should also chronologically date the property.

Banks should be in a position to execute this part of the project within a very short timeframe.

- The property that *IS* supported by some form of records represents property that ultimately can be reunited with a current beneficial owner. The process of identifying the owner will be difficult and the methodology that is ultimately employed needs careful consideration. The author suggests that any activity in relation to this property be postponed until a later stage in the project.
- The property that *IS NOT* supported by any records represents the property that may be owned by the State however it cannot be deemed to be lost or abandoned until it is opened, and its contents do not offer any evidence of ownership.

All of the property that falls within the latter category should be set aside for inspection.

Phase II

Arrangements should be made for this property to be opened and inspected to confirm whether any further records of ownership are contained therein. (Department officials

should oversee this process as the State may automatically be entitled to take possession at this point.)

Where there are no further records, an assessment needs to be made as to whether the property is of national interest thus falling within the National Monuments Act or made available to the state under the new Dormant Deposit provisions.

Permission request

As this aspect of the process is the one of prime public interest we would like to document this as part of a new television series known as Safely Kept[®]. See Authors Note below.

Extract from the Select Committee debates 2001

SELECT COMMITTEE ON FINANCE AND THE PUBLIC SERVICE
Tuesday, 26 Jun 2001
The Select Committee met at 3.30 p.m.

Members Present:

Deputy L. Belton,

Deputy B. Briscoe,

Deputy S. Fleming,

Deputy D. Foley,

Deputy C. McCreedy (*Minister for Finance*),

Deputy D. McDowell,

Deputy J. Mitchell,

Deputy M. O'Flynn,

Deputy J. O'Keefe.†

†In the absence of Deputy J. Mitchell for part of meeting.

DEPUTY M. AHERN IN THE CHAIR.

Chairman: This meeting has been convened for the purpose of consideration by this committee of the Dormant Accounts Bill, 2001. I welcome the Minister for Finance and his officials to the meeting. I suggest we consider the Bill until 10 p.m. with a sos from 7.30 p.m. to 8 p.m. if not previously concluded. A further meeting has been arranged for tomorrow, 27 June 2001, at 4.30 p.m. if we have not concluded the Bill this evening. Is that agreed?

.....**Mr. Briscoe:** My only comment on that is the greatest the frequency the greater the overheads of the bank and the more customers will have to pay. That has to be taken into consideration. With regard to safety deposit boxes and their contents, when I was Lord Mayor the Bank of Ireland took me on a tour of its dungeon - I am sure the Minister for Finance has been down there.

Mr. McCreedy: No.

Mr. Briscoe: They have all sorts of strange boxes, chests and various things there, some of which are there from the 1800s and they were never opened. What will happen when money is found in such boxes after the euro has come in and the punt is no longer used? Could such cash be converted?

Mr. McCreedy: The first question is whether that money will ever be discovered. Someone will have to come along and say, "there is a box belonging to a great granduncle of mine in the Bank of Ireland vault and I am entitled to it and entitled to open it". Under the Euro Changeover Act, the Central Bank will give value for Irish notes and coins, even after 9 February 2002. One would, however, have a number of hurdles to cross before one would get one's hands on the money. The question as to what will happen to such safety deposit boxes was also raised by some Deputies on Second Stage. They are not included in the Bill for the obvious and good reason that they are not cash instruments and people put various items in safety deposit boxes.

Mr. Briscoe: Jewellery and proceeds from bank robberies.

Mr. McCreedy: That has happened.

Mr. Belton: Bookies' tickets.

Mr. McCreevy: I have not been in the Bank of Ireland's dungeon, but all the banks have safety deposit boxes. People put their valuables into them, go off for the weekend and never think of them. It is like giving someone a loan of a loud speaker and other equipment used in an election. I gave mine away to someone organising a field day and I cannot remember to whom I gave it, but I never saw it again. I am sure something similar has happened to everyone here. The same thing happened to Deputy O'Keeffe.

Mr. J. O'Keeffe: Yes, I gave it for a charity bicycle run.

Mr. McCreevy: One thinks one will never forget it. The same applies to safety deposit boxes. Some people who put them into banks for safe-keeping may have forgotten completely about them.

Mr. Briscoe: Some of the items are big sea chests.

Mr. McDowell: There are two issues here. Deputy O'Keeffe made an important point, that there should be a duty on banks to notify account holders on a regular basis, annually or biannually. I tabled an amendment to section 10, that there should be an onus on the bank to provide a statement to the account holder on an annual basis where there is a balance of at least €30. It seems reasonable to ask the banks to provide such a statement. If that were the case, I assume we would find that far fewer accounts would be at risk of becoming dormant anyway and surely, as Deputy O'Keeffe and the Minister have said, that is the point of the Bill.

On balance, I am happy enough that the period involved should be 15 years. There is really only one question here, when on balance do we form the view that somebody has forgotten about an account or that the person may have died? In that context, a period of seven years is much too short. As I said slightly flippantly on Second Stage, it strikes me as a little too close to nationalising part of the capital base of the banks, which is something for which my party no longer argues.

Mr. McCreevy: That was well put.

Mr. McDowell: I will leave it to Deputy Mitchell or Deputy Higgins to carry that particular proposal. The question must be, at what point does the level of reactivation become so low that one can assume that people have forgotten about it. The figures which have been given to me by the IBF are not the same as the Committee of Public Account's figures, which are not the same as the Minister's figures. They do, however, suggest that the level of reactivation after ten or 15 years is still about 50%. In other words, 50% of the accounts which appear to be dormant after ten years are reactivated in the following five years, which would suggest that there are still a significant number of people who clearly have not forgotten about them.

Authors comment

I have compiled reasonably extensive legal research on the issue of safekeeping that I would be happy to share with Department officials

The Safely Kept© program mentioned above offers the potential for considerable positive media attention and as owner of the rights to the show I would be happy to discuss how we might work together in raising the public profile of this issue.