

DORMANT ASSETS BILL 2018

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Shimmins MHK.

INTRODUCTION

1. These explanatory notes relate to the Dormant Assets Bill 2018. They have been prepared by the Treasury in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.
3. The Bill has been subject to public consultation and has been updated to take account of comments raised.
4. An Impact Assessment of the Bill has been prepared.
5. In the opinion of the Member moving the Bill, the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.
6. If approved, the Act is not expected to have any significant financial or human resource implications.

BACKGROUND

7. There is currently no law in the Island that deals with the treatment of bank accounts where contact with the holder of the account has been lost.
8. The Treasury recognises the potential revenue stream dormant bank accounts could bring to good causes in the Island and with the support of local banks has developed the Dormant Assets Bill 2018.
9. The proposed legislation provides for the future potential that may arise from expanding the regime to include further classes of asset. It therefore includes provisions to enable the legislation to be extended to additional asset classes in the future.

OVERVIEW

10. The Dormant Assets Bill 2018 deals with the treatment of assets held by persons licensed to hold such assets in the Island ("licenceholders") which are dormant - that is, assets in respect of which there has been no activity by, or communication from, the person in whose name the asset is held, and the asset holder cannot be traced.
11. The legislation provides the legal basis for such assets to be transferred from licenceholders to a central fund called the Dormant Assets Fund (the "Fund"). A proportion of amounts transferred to the Fund must be retained to meet repayment

claims and operational costs, and any surplus amounts will be made available for distribution to good causes in the Island.

12. The rights of asset holders (“customers”) will be protected under the legislation. Any customer whose dormant asset (in whole or in part) has been transferred to the Fund retains an indefinite right to reclaim from the Fund the amount that was transferred.
13. The Bill includes dormant bank accounts as the first asset class. Dormant bank accounts will, in general terms, include any account held by a bank where contact has been lost with the account holder for a period of at least 15 years and where a residual unclaimed balance in respect of that account is held.

STRUCTURE OF THE BILL

14. The Bill is divided into 8 parts and a Schedule as follows:
15. **Part 1** of the Bill (clauses 1 to 10) comprises the introductory provisions on short title and commencement, general interpretation and interpretation of specific terms. It includes provision for the operation of the Bill to be extended to apply to additional classes of asset and licenceholder.
16. **Part 2** (clauses 11 to 14) establishes the Dormant Assets Fund and sets out the responsibilities of the Treasury with respect to the Fund.
17. **Part 3** (clauses 15 to 17) provides the mechanism for transferring dormant assets to the Fund.
18. **Part 4** (clauses 18 to 23) deals with the rights of holders of assets transferred to the Fund to make a claim for a repayment of the asset transferred (“repayment claim”) and with the arrangements for managing repayment claims.
19. **Part 5** (clauses 24 and 25) deals with the distribution of money from the Fund for specified purposes.
20. **Part 6** (clauses 26 to 30) sets out arrangements for the management of repayment claims when a licence holder is in default.
21. **Part 7** (clauses 31 to 35) provides transitional arrangements and arrangements for assets dormant at the time the Bill begins to apply to licenceholders.
22. **Part 8** (clauses 36 to 44) contains miscellaneous articles of the Law, including powers to make regulations and orders.
23. The Schedule contains the terms upon which a licenceholder acts as the agent of the Treasury (as manager of the Fund) with regard to the management of repayment claims, record keeping and relationships with customers.

COMMENTARY ON CLAUSES

Part 1: Introductory

Clause 1 gives the short title that the Act will have if the Bill is passed.

Clause 2 enables the making of one or more appointed day orders to bring the resulting Act into operation and to make transitional provisions in connection with the Act's commencement.

Clause 3 provides definitions for general terms used in the Bill. These definitions include that of an "account", which is relevant to the definition of "asset" provided in clause 4 and "licenceholder" provided in clause 6. An "account" is an account of money held by a licenceholder in the Island and it is the first asset class under the legislation in accordance with clause 4.

Clause 3 also provides a definition of an "asset holder" as being: -

- the person in whose name the money in the dormant account is held;
- anyone who is beneficially entitled to, or who can control the money held in the account, for example an executor of a will or an heir; or
- anyone who is entitled to demand repayment of an amount on the asset.

Essentially, and with particular reference to an account, an asset holder is anybody who under existing arrangements can seek payment of the account.

Clause 4 provides a definition of "asset" to which the legislation may be applied. An "asset" is limited to any account held by a licenceholder in the Island, but this may be extended to other assets by way of an order under clause 10(1).

Subclause (2) prescribes what may not be considered as an "asset" under the legislation. The purpose of this subsection is to ensure that no 'tainted assets' become eligible for transfer to the Fund. "Tainted assets" include those listed under the subsection i.e. those that are subject to ongoing proceedings relating to money laundering, terrorist financing or sanctions; or any other civil or criminal matters being undertaken by a law enforcement agency.

Clause 5 sets out the meaning of "balance".

A "balance" is the value of an asset once all interest due has been paid and all charges and fees deducted in accordance with the terms and conditions of that asset, but does not include any amount subject to a security interest.

The term "balance" should not be confused with the term "transferred asset" (which is defined earlier in clause 3), the latter term reflecting the exact amount of money transferred into the Fund in respect of a dormant asset and also reflecting the amount of money a customer is entitled to reclaim (under clause 18).

Clause 6 defines "licenceholder"; a licenceholder being the person holding the assets to which the legislation applies. A licenceholder is the holder of a current class 1 deposit taking licence in accordance with paragraphs 1(1) and 1(2) of Schedule 1 of the Regulated Activities Order 2011, which will essentially be any bank or building society that accepts deposits in the Island. Holders of deposit taking licences under paragraph

(3) of the same Schedule are not included as a "licenceholder" as they do not take or hold deposits in the Isle of Man.

Clause 7 provides a definition of a "dormant" account. In general, an account will be classed as dormant if it has been 'open' for a period of 15 years during which there has been no customer activity.

An account is considered open whenever it holds a residual unclaimed balance, except where it has been closed upon the instruction of the account holder.

Subclauses (2) and (3) provide that an account is not to be treated as dormant if the nature of the account is such that withdrawals are not permitted, or if such withdrawals would incur some form of penalty. Accounts subject to such limiting arrangements will not be considered as "dormant" unless the limiting arrangement ends and a further period of 15 years of inactivity passes.

Clause 8 provides a licenceholder who cannot determine the date of dormancy of an account, or whether an account is dormant, with the ability to request the Treasury to treat the account as dormant.

Clause 9 provides for the amendment of the definitions given in clauses 3 to 7.

Clause 10 permits the Treasury by order to apply the Act to other assets and in consequence to make other categories of persons holding such assets licenceholders under the Act. The Treasury is permitted to make modifications to the Act in order to apply it to different categories of asset and licenceholder. Any further application of the Act and consequential modification requires Tynwald approval.

Part 2 – The Dormant Assets Fund

Clause 11 deals with the establishment of the Dormant Assets Fund. It provides that the Fund is made up of a reserves account, which is applied to meet general liabilities and repayment claims, and a distribution account, from which distributions for charitable purposes may be made.

The clause makes provision for ensuring the Fund can meet claims for repayment from persons whose assets have been transferred to it, as any deficiency in the reserves account must be made good by a transfer from the distribution account in the first instance, and, if necessary, by a transfer into the reserves account from the General Revenue. The General Revenue must be reimbursed from the Fund monies as soon as practicable and providing that the Fund has rebuilt sufficient reserves to meet its key liabilities.

Clause 12 sets out the responsibilities and duties of the Treasury under the legislation.

Under this clause the Treasury will be responsible for the day to day administration of the Fund, including dealing with transfer arrangements and payments from the reserves account. The Treasury will defray these general administration costs, but has the ability, under clause 44, to recover reasonable costs from the reserves account of the Fund.

Under paragraph (e) the Treasury will be responsible for the preparation of distribution policies which are described further under the notes on clause 24.

Under paragraphs (g) and (h) the Treasury will manage the relationships with licenceholders and the distribution organisation.

Clause 13 allows monies held in the Fund to be invested and ensures that any interest accrued on any such investment remains within the Fund.

Clause 14 provides that the Treasury must lay a detailed annual report on the operation of the Fund before Tynwald each year. Amongst other things, that report must include details of amounts transferred into the Fund, amounts reclaimed and amounts made available for distribution (including details of the related distribution policy).

Part 3 – Notices and Transfers

Clause 15 deals with the notification steps that will be undertaken prior to the transfer of a dormant asset to the Fund. The arrangements under this clause and the following clause establish the annual notice and transfer cycle through which any asset that became “dormant” during the previous July to June period (the previous ‘relevant year’ as defined in clause 3) transferred to the Fund.

Under subclause (1) a licenceholder must provide the Treasury with a notice of its assets that became dormant the preceding July to June period within 3 months of the start of a relevant year. The form and content of that notice will be specified within an order under subclause (5), however, generally the notice will include itemised details of each dormant asset listed except where balances are below £100 in which case a licenceholder may aggregate these. The Treasury is able to ask for any further information about a dormant asset and/or decline any asset proposed for transfer. Where further information is requested the timescales for complying with the remaining parts of the notice and transfer cycle may be varied.

Subclause (2) is of particular importance to the notice and transfer arrangements. The subsection deals with customer notifications. It is a requirement that a licenceholder must send a customer notification to the last known contact details of an asset holder, in a final effort to re-unite the asset with its owner before it is transferred to the Fund. A customer notification under this subsection may be sent at any time after an asset has become dormant but before the end of September in the relevant year after the year in which the asset became dormant. The minimum period of time a customer has to respond to such a notification to claim their asset before it transfers to the Fund is two months.

Clause 16 provides procedural arrangements for the transfer of dormant assets to the Fund including arrangements for information which must accompany such transfers.

Changes to the status of any assets listed on the notice under clause 15(1) that arise before 30 November must be applied by a licenceholder for the purpose of the transfer to the Fund. In particular, assets that have ceased to be dormant or regarding which the Treasury has notified the licenceholder that the asset should not

be transferred, will not be included in the notice and transfer requirements in this clause.

In December a licenceholder will be required to submit a further notice to the Treasury which will confirm the dormant assets that will be transferred to the Fund, and the transfer of such assets must take place.

If for any reason (including the variation of the time periods in this clause by the Treasury under clause 15) the transfer has not occurred by the prescribed time, the transfer must take place within the next 12 months

Clause 17 provides that a dormant asset whose balance is held in a foreign currency must be converted to the Fund currency within two days of it being transferred. Under subclause (2) the rate of conversion will be determined by the prevailing exchange rate that applies to the asset in accordance with its terms and conditions on that date.

Clause 18 sets out the rights of a holder of a dormant asset that has been transferred to the Fund (the "transferred asset").

With respect to the transferred asset, the asset holder no longer has a right to payment of the transferred asset against the licenceholder. The asset holder does however have against the Treasury, as manager of the Fund, whatever right to payment of the transferred asset the holder would have had if the asset not been transferred. However, the asset holder is not entitled to interest on the transferred asset for any period it is held in the Fund, unless Treasury by order provides otherwise.

An asset holder whose asset was held in a foreign currency before it transferred will only be entitled to recover in the Fund currency the value of the transferred asset as it was at the time of conversion under clause 17.

The right of a holder to claim from the Fund is limited to the amount of the transferred asset only: a licenceholder retains any other liability to the holder for any other amount or value not transferred.

Clause 19 sets out the duties of licenceholders in relation to the dormant assets they have transferred to the fund.

In summary, after a licenceholder has transferred a dormant asset to the Fund, the licenceholder must retain the records in relation to that asset and receive, verify and deal with repayment claims from asset holders. This includes paying the asset holder the amount they are entitled to recover from the Fund. Such a payment out to an asset holder will subsequently be reclaimed from the Treasury in accordance with clause 21.

In exceptional circumstances, a licenceholder can apply to the Treasury to request that an amount due for payment to an asset holder is paid to the licenceholder before payment to the asset holder, or to request that the Treasury make the payment directly to the asset holder.

Subclause (1)(h) specifies that in respect of any transferred assets, a licenceholder will continue to be responsible for providing information and assistance to any "law

enforcement agency” for a “permitted purpose” (both terms having been defined earlier in clause 3).

Clause 20 deals with the responsibilities of licenceholders to report to Treasury annually on their repayment claim experience. The details provided in annual returns will be subject to publication through the annual report of the Fund.

Clause 21 deals with the reimbursement process for licenceholders in relation to amounts they have paid out as repayment claims.

A licenceholder is entitled to seek recovery of amounts paid out in repayment claims, by making a quarterly application to the Treasury (a “reclaim certificate”). A reclaim certificate cannot be made for amounts paid out on repayment claims more than 3 years before the date of the reclaim certificate, or for amounts paid out in error.

Clause 22 provides that a licenceholder acts as the Treasury’s agent in specified matters. It formalises the responsibilities and duties of licenceholders in respect of the dormant assets they have transferred to the Fund. The terms on which a licenceholder acts as agent are found in the Schedule.

The terms of the agency agreement are binding on any liquidator or other person acting in the place of a licenceholder under Part 6 (which deals with the operation of repayment claims in cases of default by a licenceholder).

Clause 23 deals with the costs of licenceholder.

The clause provides that a licenceholder may only deduct costs or expenses from an asset prior to it being transferred to the Fund but only in so far that the terms and conditions that are binding on an asset holder allow.

In the event a transferred asset is subject to a repayment claim or is otherwise to be recovered from the Fund, a licenceholder may not deduct any further amounts from the transferred asset to be paid out in respect of costs incurred in connection with the fulfilment of its responsibilities under the legislation.

Part 5 – Distribution

Clause 24 deals with the distribution policies, the setting of which will be the Treasury’s responsibility.

A distribution policy will determine the value of assets held in the Fund at any time that must be retained to meet any repayment claims and cover any costs, and any surplus amounts that may be made available for distribution.

Distribution policies will be reported in the annual report of the Fund in accordance with clause 14.

Clause 25 deals with the distribution of Fund money.

Subclause (1) provides that any amounts held in the distribution account of the Fund may be used to pay the costs of a distribution organisation and may be used for distribution to charitable purposes specified in subclause (7).

Subclause (2) enables the Treasury to make available money held in the distribution account of the Fund to the distribution organisation.

Subclauses (3) to (5) deal with the appointment of the distribution organisation. The distribution organisation must be independent from the management of the Fund and Tynwald must approve the terms of its appointment. A body appointed as a distribution organisation will not be eligible to receive a distribution from the Fund for its own purpose.

Subclause (7) sets the parameters for the distribution of money to good causes in the Island which the distribution organisation must follow.

Under subclause (7)(a) any organisation carrying out charitable purposes that achieves any of the objectives listed is eligible to receive distribution money. Distributions may only be made where the objective is achieved in the Island. Under subsection (7)(b) any registered charity carrying out any charitable purpose is also eligible for a distribution.

Under subclause (8) the Treasury may, with the approval of Tynwald, specify proportions in which amounts may be distributed to the good causes listed. Under subclause (13), the Treasury may, with Tynwald approval, amend the list of charitable objectives in subclause (7)(a).

The distribution organisation must report annually on its activity and the report will be laid before Tynwald.

Part 6 – Default of licenceholder

Clause 26 preserves the rights of asset holders to reclaim their transferred assets from the Fund despite, amongst other things, the licenceholder that originally held their asset no longer holding a relevant licence in the Island.

Clause 27 provides that the operation of Part 4 of the Bill, which deals with repayment claims of asset holders, will continue despite the default of a licenceholder.

Clause 28 provides that the Treasury may, if they are not otherwise being undertaken by or for a licenceholder, perform certain duties of a licenceholder in clause 19.

This clause provides a back-stop that ensures asset holders will always have a mechanism to reclaim their transferred asset, if a licenceholder defaults or if the arrangements in clause 29 to provide for repayment claims in the event of licenceholder default, have ceased to operate.

There is some interaction between this clause and clause 36 which permits the Treasury to obtain relevant records relating to transferred assets, which will be necessary if the Treasury became responsible for the customer relationship and processing repayment claims.

Clause 29 provides arrangements for circumstances when a licenceholder is in default and specifically provides that in these circumstances the licenceholder must put in place a person (referred to in this note as a successor) to act on its behalf in respect of the transferred asset holders and repayment claims for a period of at least 6 years. At the end of this period all relevant records in respect of transferred assets will be collected by the Treasury in accordance with clause 36.

The length of the 6 year period may be varied through regulations introduced under clause 30(a) and (b). The intention is that the duration of a successor's responsibilities in respect of transferred assets should continue for as long as the successor's responsibilities in relation to the active book of residual business of the licenceholder.

Clause 30 provides powers for the Treasury to introduce regulations that deal with arrangements in cases of default by a licenceholder. The clause gives the Treasury the flexibility, should it be necessary in the circumstances of the licenceholder in default, to determine how any third party carrying out the responsibilities on behalf of the licenceholder under the legislation must do so.

Part 7 – Transitional Arrangements and Assets Dormant at Commencement

Clause 31 provides transitional arrangements for licenceholders that have no system, or no effective system, of identifying assets that are dormant according to the definitions provided in the legislation. These arrangements are available to existing licenceholders in the Island and any new licenceholders that may be granted a licence in the Island after the legislation is introduced.

Transitional arrangements provide a period of up to 5 years to establish a mechanism for identifying dormant assets. During a transitional period, a licenceholder will not have to comply with Part 3 of the legislation (Notice and Transfers). Additionally, until the transitional period has ended, a licenceholder will not be required to notify the Treasury of, or transfer, assets dormant at commencement to the Fund in accordance with clauses 34 and 35 that follow.

Any licenceholder making use of a transitional arrangement must report to the Treasury on that arrangement under subclause (5).

Clause 32 provides a definition of the terms "assets dormant at commencement" and "applicable dormant at commencement date".

"Assets dormant at commencement" refers to any asset a licenceholder holds that became dormant prior to the first relevant year in which the licenceholder became eligible to comply with the provisions of the legislation. In essence, these are any dormant assets a licenceholder holds that have not otherwise, owing to their dormancy age, been notified and transferred to the Treasury as part of the normal annual transfer cycle provided under Part 3 of the legislation.

An "applicable dormant at commencement date" is a term used to describe the date the transfer obligations under the legislation begin to apply to a licenceholder. In general, it is the date the legislation is introduced, the date a person becomes a new

licenceholder, or, where a licenceholder is making use of transitional arrangements, the date that arrangement ends.

Clause 33 deals with customer notifications that must be sent in respect of assets dormant at commencement, which serve as a final attempt to reunite a customer with their lost asset before it is transferred to the Fund.

A customer notification under this clause must be sent after the legislation begins (or in the case of a new licenceholder, after their licence commences), but before the assets dormant at commencement are notified to the Treasury under clause 34.

Clause 34 sets out the notice arrangements in relation to assets dormant at commencement.

In summary, the Treasury must be notified of the assets dormant at commencement a licenceholder holds within 12 months of a licenceholder's applicable dormant at commencement date. Under subclause (2) a licenceholder may declare these dormant assets by way of a single or multiple notices.

Under subclause (3) an order will be made to specify the form and content of the notice.

Clause 35 deals with the transfer of assets dormant at commencement to the Fund.

Following the submission of a notice to the Treasury under the previous clause a period of three months is allowed during which the status of the asset may change and such a change must be applied by a licenceholder.

Following the application of any such changes, a licenceholder will submit a further notice to the Treasury within the fourth month following the initial submission of a notice under clause 34; and the transfer of the assets listed will take place.

Part 8 – Miscellaneous

Clause 36 deals with the disclosure of information.

Subclause (1) provides for customer records to be passed from a licenceholder (or its successor) to the Treasury. This provision is necessary if the Treasury invokes its powers under clause 28 as the customer records will be essential in the processing of any repayment claims.

Subclause (3) provides a gateway for the Treasury to share information about dormant asset holders with a law enforcement agency for a permitted purpose. In principle, in the event the Treasury takes on responsibility for processing repayment claims directly it may need support from one or more of the bodies listed to ensure any repayment applications are processed with due regard for the necessary safeguards that would ordinarily surround such a repayment (i.e. the undertaking of KYC, AML, or CFT checks where appropriate).

Clause 37 sets out the offences connected with providing false or misleading information, and failure to provide information, to the Treasury under the legislation.

Clause 38 provides that the Treasury and the distribution organisation will not be classed as deposit takers in respect of the fulfilment of their responsibilities under the legislation.

Clause 39 clarifies the extent of the liability of the Treasury under the Act.

Clause 40 provides that nothing in the Act authorises a disclosure in contravention of existing data protection legislation in the Island.

Clause 41 ensures any other obligations, whether by another enactment or imposed by law, are not affected by the operation of this legislation.

In respect of privileged information nothing in the Bill compels the production or divulgence by an advocate or other legal adviser of an item subject to legal privilege, but an advocate or legal adviser may be required to give the name and address of any client.

Clause 42 provides generally for the making of statutory documents under the Act. Tynwald approval is required for the making of statutory documents unless otherwise expressly stated.

Clause 43 provides that nothing in the Act affects the operation of *bona vacantia* in the Island.

Clause 44 provides for the Treasury, or other person authorised to perform the Treasury's functions under the Act, to recover reasonable costs from the Fund for the performance of their functions under the Act.

Schedule

The Schedule sets out the terms of agency between the Treasury and licenceholders and in general provides for the manner in which a licenceholder will undertake its duties in relation to transferred assets and provides additional terms in relation to the handling of complaints and disputes. It is brought into effect by clause 22(2).