



Isle of Man

Ellan Vannin

DORMANT ASSETS BILL 2018

DORMANT ASSETS BILL 2018

Explanatory Memorandum

1. This Bill is promoted by Mr Henderson MLC on behalf of the Council of Ministers.
2. *Part 1* comprises introductory provisions, definitions, and provision for extending the application of the resulting Act (“the Act”). *Clauses 1-3* deal with the short title of the Act, its commencement and the interpretation of certain terms used in it.
3. *Clause 4* sets out the meaning of “asset”, excluding certain property from being an asset for the purposes of the Act.
4. *Clause 5* sets out the meaning of “balance” of an asset.
5. *Clause 6* sets out the meaning of “licenceholder”, licenceholders being the persons holding the assets to which the Act applies. The Treasury may by order provide for any exemptions to this definition, subject to Tynwald approval.
6. *Clause 7* sets out the meaning of “dormant” for the purposes of the Act. The definition applies to an account (which is an “asset” in the Act) held on behalf of the account holder by a licenceholder. The clause also provides for the circumstances when an account which has become dormant ceases to be dormant before any transfer of funds into the Dormant Assets Fund is made. In such a case the clause provides that the requirements to transfer the funds in the account no longer apply.
7. *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.
8. *Clause 9* permits the Treasury by order to amend the definitions in *clauses 3 to 7*, subject to the approval of Tynwald.
9. *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.
10. *Part 2* contains provisions concerning the Dormant Assets Fund (“the Fund”). *Clause 11* establishes the Fund, which is under the care and management of the Treasury and provides that the Fund is made up of a reserves account (to meet repayment claims (as described in paragraph 17) and other liabilities) and a distribution account (to make distributions in accordance with *Part 5*). The

clause provides that any deficiency in the reserves account for meeting the Fund's liabilities 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. The Treasury is permitted by regulations to provide further for the structure and operation of the Fund, subject to Tynwald approval.

11. *Clause 12* sets out the duties and responsibilities of the Treasury regarding the Fund.
12. *Clause 13* provides that the Treasury may invest the Fund, and for any gains made on such investment to accrue to the Fund. The Treasury may delegate the investment of the Fund to appropriately qualified persons.
13. *Clause 14* provides that an annual report on the operation of the Fund must be prepared and laid before Tynwald. The matters to be included in the report are set out in *clause 14(2)*. There is in addition a provision enabling the Treasury to publish policies and procedures concerning the operation of the Fund.
14. *Part 3* provides for an annual cycle of notification and transfer of dormant assets from the licenceholder to the Treasury, based upon a "relevant year" (as defined in *clause 3*). *Clause 15* deals with the initial notice a licenceholder is required to give to the Treasury at the start of the relevant year concerning the dormant assets it holds that became dormant during the preceding year; and the notice the licenceholder is required to give to the persons in whose name those dormant assets are held. The Treasury is enabled to request further information about any particular dormant asset following receipt of a notice, and has discretion to determine that an asset should not be transferred to the Fund. The time periods in *clause 16* for the subsequent actions in the annual cycle can be varied by the Treasury if it requests further information from a licenceholder under this clause. In addition, the Treasury is enabled to specify the details of the notice requirements by order. *Clause 15* provides for its contravention by a licenceholder to be an offence and sets out the maximum penalty for such offence.
15. *Clause 16* deals with the transfer of dormant assets into the Fund. It provides for the requirement on a licenceholder to notify the Treasury of the assets it intends to transfer into the Fund and to transfer such dormant assets to the Fund; for the assets which should not be included in the notice of intended transfer or transferred; and for the requirement, 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, to transfer any assets that should have been transferred within the next 12 months. The Treasury is enabled to specify the details of the notice of intended transfer and the information which must accompany a transfer by order. *Clause 16* provides for its contravention by a licenceholder to be an offence and sets out the maximum penalty for such offence.

16. *Clause 17* provides that any dormant asset consisting of money in another currency must be converted into the Fund currency (as defined in *clause 3*) at a specified currency conversion rate before a transfer to the Fund.
17. *Part 4* concerns the recovery of monies by the holders of dormant assets that have been transferred to the Fund. *Clause 18* sets out the rights of a holder of a dormant asset that has been transferred to the Fund (a “holder”) with respect to the balance of the dormant asset transferred into the Fund (“the transferred asset”). The clause provides that the holder has against the Treasury as manager of the Fund whatever right to claim payment of the transferred asset the holder would have had against the licenceholder if the asset had not been transferred (a “repayment claim”), except that the 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. The clause also provides for the rights on a repayment claim of a holder of a transferred asset which, before transfer, had consisted of money in a currency other than the Fund currency. *Clause 18* clarifies that the right of a holder to claim from the Fund is limited to the amount of the transferred asset (and any interest permitted by order) only. However, the Treasury has a discretion to pay a holder a sum greater than that to which the holder is entitled on a repayment claim where it considers it appropriate to do so, having regard to the amount held in the Fund and to the circumstances of a particular repayment claim. The clause also provides that the Treasury holds a transferred asset in the Fund on the same terms as a licenceholder held the asset prior to transfer, unless the Treasury by order provides otherwise. Orders under *clause 18* require Tynwald approval.
18. *Clause 19* sets out the duties of licenceholders with respect to transferred assets. It provides that 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 holders, including paying the holder the amount the holder is entitled to recover from the Fund; that in exceptional circumstances a licenceholder can apply to the Treasury to request it is paid before paying out on a repayment claim, or to request that the Treasury make the payment directly from the Fund; and that a licenceholder must provide information and assistance concerning a transferred asset or a holder to a law enforcement agency, when requested, for a permitted purpose. *Clause 19* provides for its contravention by a licenceholder to be an offence and sets out the maximum penalty for such offence.
19. *Clause 20* provides that a licenceholder is required to make an annual statement to the Treasury concerning the repayment claim activity in the preceding year. The Treasury is enabled to specify the details to be included in such a statement by order. *Clause 20* provides for its contravention by a licenceholder to be an offence and sets out the maximum penalty for such offence.
20. *Clause 21* provides that a licenceholder is entitled to seek recovery out of the Fund of amounts paid out to holders of transferred assets as a result of repayment claims, by making a quarterly application to the Treasury (a “reclaim certificate”); and that 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. The Treasury is enabled by order to set out the details concerning the content of, and procedure relating to, reclaim certificates.

21. *Clause 22* provides that, in respect of dealing with repayment claims and holders of transferred assets, a licenceholder acts as the Treasury's agent. It brings into effect the *Schedule*, which sets out the terms of the agency between the Treasury and the licenceholder. The clause permits additional terms to be agreed between the parties and clarifies that the terms of agency bind a liquidator or other person acting in the place of the licenceholder in the circumstances of default of a licenceholder under *Part 6*.
22. *Clause 23* deals with the costs a licenceholder may recover for carrying out its functions under the Act, and for the refunding by the licenceholder of those costs to a dormant asset holder who makes a successful repayment claim.
23. *Part 5* concerns the distribution of monies in the Fund for charitable purposes. *Clause 24* imposes on the Treasury an obligation to establish a distribution policy to determine the funds which are available for distribution under this Part.
24. *Clause 25* deals with the distribution of Fund money in the distribution account, providing for the appointment of a distribution organisation by order with Tynwald approval; for the terms of appointment and procedures of such an organisation; for the charitable purposes in the Island for which monies from the Fund may be distributed; for the proportions to be received by the various charitable purposes to be specified, and for the various objectives of the charitable purposes to be amended, in an order subject to Tynwald approval; for definitions concerning charities to be amended by order, subject to Tynwald approval, on any change to charities law in the Island; and for an annual report on the activity of the distribution organisation under this clause to be made to the Treasury.
25. *Part 6* deals with the operation of *Part 4* of the Act (repayment claims) in the case of default by a licenceholder. *Clause 26* provides that the rights of a holder of a transferred asset to a repayment claim under *clause 18* are preserved on the dissolution, winding up or other default of the relevant licenceholder.
26. *Clause 27* sets out that, subject to the provisions in *Part 6*, specified circumstances of default by a licenceholder do not affect the operation of *Part 4*.
27. *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*.
28. *Clause 29* provides for the dealing with repayment claims and retention of records of holders of transferred assets in certain specified circumstances of default by a licenceholder, and for the status of the costs of a liquidator dealing with repayment claims under the Act.
29. *Clause 30* enables the Treasury to make regulations to provide further for the operation of the Act in the circumstances of default by a licenceholder set out in

- clause 27.* Any regulations made under this clause are subject to Tynwald approval.
30. *Part 7* makes provision for transitional arrangements, and for the operation of the notice and transfer of dormant assets at the time the Act comes into operation or begins to apply to a licenceholder. *Clause 31* provides a licenceholder with a 5 year period in which to establish a system, or to adapt an existing system, to comply with the annual cycle of notice and transfer requirements in *Part 3*, in specified circumstances. It provides for these transitional provisions to be open to persons newly becoming licenceholders after the Act comes into operation; and imposes notice requirements on licenceholders making use of the transitional provisions.
31. *Clause 32* defines assets “dormant at commencement” and “applicable dormant at commencement date”.
32. *Clauses 33 to 35* set out the notice and transfer requirements for assets dormant at commencement, which are similar to the requirements in *Part 3* to give notice of, and to transfer to the Fund, dormant assets.
33. *Part 8* contains miscellaneous provisions. *Clause 36* provides for the Treasury to have access to records and information the purposes of carrying out its functions under the Act; provides for contravention of the clause to be an offence and for the maximum penalty for such offence; and permits the Treasury and law enforcement agencies to exchange information on assets and asset holders acquired under this clause and *clause 19* for specified purposes.
34. *Clause 37* makes the provision of false or misleading information, or failure to provide information in connection with an application or repayment claim, under the Act an offence, and provides the maximum penalty for these offences.
35. *Clause 38* clarifies that the functions of the Treasury or a distribution organisation under the Act do not constitute regulated activity under the financial services legislation.
36. *Clause 39* clarifies the extent of the liability of the Treasury under the Act.
37. *Clause 40* provides that nothing in the Act authorises disclosure of personal data in contravention of the data protection legislation.
38. *Clause 41* clarifies that other obligations in law are not affected by the Act, unless expressly stated.
39. *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.
40. *Clause 43* provides that nothing in the Act affects the law on *bona vacantia*.
41. *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 incurred in the performance of functions under the Act.

42. The *Schedule* is brought into effect by *clause 22(2)* and sets out the terms on which a licenceholder acts as the agent of the Treasury as manager of the Fund.
43. If approved, the Act is not expected to have any significant financial or human resource implications.
44. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



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DORMANT ASSETS BILL 2018

1 **A BILL** to provide for the establishment of a fund into which the balances of
 2 certain dormant assets may be transferred; and for the distribution of money in
 3 that fund for charitable and other purposes, subject to a right to reclaim those
 4 balances from the fund; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and
 consent of the Council and Keys in Tynwald assembled, and by the authority of the
 same, as follows:—

5 **PART 1 – INTRODUCTORY**

6 **1 Short title**

7 The short title of this Act is the Dormant Assets Act 2019.

8 **2 Commencement**

9 (1) This Act (other than section 1 and this section) comes into operation on
 10 such day or days as the Treasury may by order appoint.

11 (2) An order under subsection (1) may include such consequential,
 12 incidental, supplementary, transitional and transitory provision as the
 13 Treasury considers necessary or expedient.

14 **3 Interpretation**

15 J2017/1/1 and drafting

16 (1) In this Act —

17 “**account**” means an account that —

18 (a) has at all times only consisted of money; and

19 (b) is provided by a licenceholder in the Island as part of its activity
 20 of accepting deposits;

21 “**applicable dormant at commencement date**” has the meaning given by section
 22 32(2) (assets dormant at commencement);

23 “**asset**” has the meaning given by section 4 (“Asset” defined);

1 “asset holder” or “holder” means —

- 2 (a) in respect of an asset, a person (whether or not an individual) —
- 3 (i) in whose name the asset is held by a licenceholder;
- 4 (ii) who is beneficially entitled to the asset or has the power to
- 5 operate it or control it; or
- 6 (iii) who is entitled to demand repayment of an amount on the
- 7 asset; and
- 8 (b) in respect of a transferred asset, the persons referred to in
- 9 paragraph (a) immediately prior to the transfer of the asset into
- 10 the Fund;

11 “balance” has the meaning given by section 5 (“Balance” defined);

12 “bankruptcy” is to be construed in accordance with subsection (2);

13 “distribution account” means the distribution account referred to in section

14 11(2) (the Fund);

15 “distribution organisation” means an organisation appointed under section

16 25(3) (distribution of Fund money);

17 “distribution policy” has the meaning given by section 24 (distribution policy);

18 “dormant” has the meaning given by section 7 (meaning of “dormant”);

19 “dormant at commencement” in relation to an asset has the meaning given by

20 section 32(1) (assets dormant at commencement);

21 “Fund” means the Dormant Assets Fund established under section 11(1) (the

22 Fund);

23 “Fund currency” means the Manx pound as defined in the *Currency Act 1992*

24 and sterling;

25 “law enforcement agency” means—

- 26 (a) the persons specified in section 10 of the *Financial Intelligence Unit*
- 27 *Act 2016*; and
- 28 (b) the Financial Intelligence Unit;

29 “licenceholder” has the meaning given by section 6 (“Licenceholder” defined);

30 “liquidator” means the person (whether the official receiver or some other

31 person) for the time being charged with the administration of the

32 property of a licenceholder by virtue of its bankruptcy;

33 “permitted purpose” —

- 34 (a) means any of the following—
- 35 (i) the prevention, detection, investigation or prosecution of
- 36 criminal offences, whether in the Island or elsewhere;
- 37 (ii) the prevention, detection or investigation of, or the
- 38 bringing of proceedings for, conduct for which penalties

- 1 other than criminal penalties (including civil and
2 regulatory penalties) are provided under the law of the
3 Island or of any country outside the Island;
- 4 (iii) the furtherance or discharge of any function under this Act
5 or any other enactment of the Treasury or a law
6 enforcement agency (other than the Isle of Man Office of
7 Fair Trading) seeking access to information regarding an
8 asset holder or a dormant asset; and
- 9 (iv) the furtherance or discharge of any function of the Isle of
10 Man Office of Fair Trading under Schedule 4 to the
11 *Financial Services Act 2008* and in connection with the
12 licensing and registration of moneylenders under the
13 *Moneylenders Act 1991*; and
- 14 (b) includes measures taken to —
- 15 (i) determine whether or not to investigate, prosecute or bring
16 proceedings;
- 17 (ii) initiate or bring to an end such an investigation,
18 prosecution or proceedings; and
- 19 (iii) trace, restrain, freeze, seize, confiscate or recover assets;
- 20 “**reclaim certificate**” means an application by a licenceholder to the Treasury
21 under section 21(1) (licenceholder may recover payment from the Fund);
- 22 “**Regulated Activities Order**” means the Regulated Activities Order 2011¹, as it
23 has effect from time to time;
- 24 “**relevant business**” means the class of business activity the carrying on of
25 which means that a person falls within the definition of licenceholder for
26 the purposes of this Act;
- 27 “**relevant year**” means the 12 month period commencing on 1 July and ending
28 on the following 30 June and the “**first relevant year**” is the relevant year
29 in which this Act comes into operation;
- 30 “**repayment claim**” means a claim for repayment made under section 18(1)(b)
31 (rights of asset holders);
- 32 “**reserves account**” means the reserves account referred to in section 11(2) (the
33 Fund); and
- 34 “**transferred asset**” means the balance of a dormant asset which has been
35 transferred to the Fund under this Act.
- 36 (2) In this Act, and without limiting the definition in the *Bankruptcy Code*
37 1892, references to bankruptcy include —
- 38 (a) the winding up of an insolvent company under Part V of the
39 *Companies Act 1931*; and

¹ SD 0884/11

- 1 (b) a process or state equivalent or similar to such winding up, or to
2 bankruptcy, under the law of a jurisdiction outside the Island.

3 4 “Asset” defined

- 4 (1) In this Act, an asset means —
5 (a) an account; and
6 (b) any other asset to which this Act is applied by an order under
7 section 10(1) (further application of this Act).
- 8 (2) In this Act, an asset is not —
9 (a) property which is the subject of a disclosure made under Part 3 of
10 the *Proceeds of Crime Act 2008* or under Part III of the *Anti-*
11 *Terrorism and Crime Act 2003*;
12 (b) criminal property within the meaning given in section 158 of the
13 *Proceeds of Crime Act 2008*;
14 (c) property which is subject to —
15 (i) a restraint order;
16 (ii) a freezing order;
17 (iii) a detention order; or
18 (iv) another restrictive measure,
19 under the *Proceeds of Crime Act 2008*, *Terrorism and Other Crime*
20 *(Financial Restrictions) Act 2014* or the *Anti-Terrorism and Crime Act*
21 *2003*;
22 (d) property which is the subject of an order or regulations made
23 under the *European Communities (Isle of Man) Act 1973* or the
24 United Nations Act 1946² (of Parliament) which place financial
25 sanctions on named individuals or entities; or
26 (e) any other property in respect of which a licenceholder has been
27 notified that there is a criminal or civil investigation being
28 undertaken by any law enforcement agency.
- 29 (3) To avoid doubt, subsection (2) does not apply if —
30 (a) in the case of property to which paragraph (a) of that subsection
31 applies, the appropriate consent has been given under section 151
32 of the *Proceeds of Crime Act 2008*, or the moratorium period has
33 passed; or
34 (b) in the case of property to which any one of paragraphs (b) to (e)
35 apply, the circumstances specified in the applicable paragraph
36 cease to apply.
- 37 (4) Any property to which subsection (2) applies must not be notified to the
38 Treasury or transferred to the Fund as a dormant asset under this Act.

² c. 45

1 **5 “Balance” defined**

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J2017/1/3

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(1) For the purposes of this Act, the balance of an asset at any particular time is the amount, or value, owing to the holder of the asset in respect of the asset at that time, after adjustments have been made for sums due in respect of the asset (such as any interest due or any fees or charges payable at that time, including those payable under section 23(1) (costs of licenceholder)).

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(2) To avoid doubt, a reference to the sums due is a reference to sums due according to the terms and conditions with respect to the asset as applicable from time to time and up to the time referred to in subsection (1).

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(3) However, the balance of an asset at any particular time does not include such amount, or value, in that asset as is subject to a security interest.

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(4) In subsection (3), “security interest” includes a mortgage or charge (whether legal or equitable), deed of bond and security, debenture, lien, pledge, assignment by way of security or other means of securing the payment or discharge (in whole or part) of a debt or liability.

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6 “Licenceholder” defined

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(1) In this Act, a “licenceholder” means the holder of a class 1 deposit taking licence in accordance with paragraphs 1(1) and 1(2) of Schedule 1 to the Regulated Activities Order, or with the equivalent provisions of any instrument or Manx legislation from time to time replacing that Order (“the licence”).

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(2) Despite subsection (1), a person is not a licenceholder for the purposes of this Act if the licence of that person is revoked or withdrawn or for any period that the licence is suspended.

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(3) The Treasury may by order provide that a person is exempt from the definition of licenceholder set out in subsection (1).

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Tynwald procedure – approval required.

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7 Meaning of “dormant”

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J2017/1/5 and drafting

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(1) Subject to the following provisions of this section, an account is dormant at any time for the purposes of this Act if –

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(a) the account has been open throughout the period of 15 years ending at that time; and

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(b) during that period –

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(i) no transactions carried out in relation to the account were initiated by a holder of the account; and

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- 1 (ii) there is no evidence held by the licenceholder of the holder
2 of the account having made any contact with the
3 licenceholder in relation to that account by any means of
4 communication.
- 5 (2) An account is not to be treated as dormant if at any time during the
6 period mentioned in subsection (1)(a) —
- 7 (a) a transaction initiated by a holder of the account (the “account
8 holder”) was carried out, or the licenceholder in question holds
9 evidence of contact having been made, in relation to another
10 account in the name of the account holder held with the same
11 licenceholder; or
- 12 (b) under the terms and conditions of the account —
- 13 (i) withdrawals were not permitted from the account; or
14 (ii) there was a financial penalty or other disincentive for
15 making a withdrawal from the account and the financial
16 penalty or other disincentive applied in all circumstances.
- 17 (3) If any of the restrictions mentioned in subsection (2)(b) applied to an
18 account but the account then continues without such a restriction, the
19 account is treated as having been opened only at the date on which the
20 restriction ceased to apply.
- 21 (4) For the purposes of subsection (1), an account is to be treated as
22 remaining open where it is closed otherwise than by, or on the
23 instructions of, the holder of the account.
- 24 (5) For the purposes of subsection (2)(b)(ii), “financial penalty or other
25 disincentive” does not include a reasonable fee for keeping the account
26 or for carrying out a transaction on the account, or a requirement to give
27 a reasonable period of notice of a withdrawal from the account.
- 28 (6) An account ceases to be dormant if, at any time before a transfer to the
29 Fund in relation to the account made under —
- 30 (a) section 16(3) (transfer of dormant assets); or
31 (b) section 35(5) (transfer of assets dormant at commencement),
32 an event occurs in relation to the account which, if it had occurred
33 during the period mentioned in subsection (1)(a), would have meant the
34 account was not dormant.
- 35 (7) The notice and transfer requirements in sections 15 and 16 (or sections 34
36 and 35, as the case may be) do not apply to an account to which
37 subsection (6) applies.

38 8 Cases where dormancy cannot be determined

- 39 (1) If a licenceholder is unable to determine —

- 1 (a) the date on which an account referred to in section 7(1)(a)
 2 (meaning of “dormant”) becomes dormant; or
 3 (b) whether such an account is in fact dormant,
 4 the licenceholder may apply to the Treasury, in such form and
 5 accompanied by such information as the Treasury may require, seeking
 6 that the Treasury treat the account as dormant for the purposes of this
 7 Act.
- 8 (2) If, as a result of an application under subsection (1), the Treasury agrees
 9 to treat an account as dormant, that account is dormant for the purposes
 10 of this Act even if the period during which no transactions have been
 11 carried out or no contact has been made under section 7(1)(b) in relation
 12 to the account is less than 15 years.

13 9 Amendment of definitions

- 14 The Treasury may by order amend any provision in sections 3 to 7
 15 (interpretation, “Asset” defined, “Balance” defined, “Licenceholder” defined
 16 and meaning of “dormant”).
 17 Tynwald procedure — approval required.

18 10 Further application of this Act

- 19 (1) The Treasury may by order specify an asset (other than an account) to
 20 which this Act applies (a “new asset”), subject to such exceptions,
 21 adaptations and modifications as may be specified in the order.
 22 Tynwald procedure — approval required.
- 23 (2) An order under subsection (1) may disapply any provision of this Act
 24 that is inconsistent with, or is unnecessary or requires modification in
 25 relation to, a new asset to which this Act is applied by the order.
- 26 (3) An order under subsection (1) is subject to subsection (4).
- 27 (4) In relation to an asset to which this Act is applied by an order under
 28 subsection (1) a “licenceholder” may only be —
 29 (a) a person issued with a licence under section 7 of the *Financial*
 30 *Services Act 2008*; or
 31 (b) a person or class of persons specified in an order made by the
 32 Treasury.
 33 Tynwald procedure — approval required.
- 34 (5) Section 6(2) (“Licenceholder” defined) applies to any licenceholder
 35 mentioned in subsection (4) and for this purpose “licence” in that section
 36 includes a permit or other form of authorisation.
- 37 (6) An order under subsection (1) may do all or any of the following —

- 1 (a) specify the exceptions, adaptations and modifications subject to
2 which this Act applies to a new asset; and
- 3 (b) set out the text of this Act, incorporating the exceptions,
4 adaptations and modifications referred to in paragraph (a).

5 PART 2 – DORMANT ASSETS FUND

6 11 The Fund

7 J2017/1/18; Oireachtas 2001/32/17 and drafting

- 8 (1) There is established the Dormant Assets Fund.
- 9 (2) The Fund consists of a reserves account and a distribution account both
10 of which are separate from the General Revenue.
- 11 (3) The Fund is under the care and management of the Treasury.
- 12 (4) Transfers made into the Fund in accordance with this Act must be paid
13 into the reserves account of the Fund.
- 14 (5) Payments out of the Fund to meet repayment claims and any other
15 liabilities as permitted under this Act must, unless this Act provides
16 otherwise, be made out of the reserves account of the Fund.
- 17 (6) Monies to be distributed in accordance with Part 5 must be transferred
18 from the reserves account to the distribution account prior to any
19 distribution from the Fund.
- 20 (7) Whenever the monies in the reserves account are insufficient to meet the
21 liabilities of the Fund as specified in this Act, there must be paid into that
22 account from the distribution account the monies that are necessary to
23 meet those liabilities.
- 24 (8) Whenever the monies in both the reserves account and distribution
25 account are insufficient to meet the liabilities of the Fund as specified in
26 this Act, the Treasury must pay into the reserves account out of the
27 General Revenue an amount not exceeding the amount of the deficiency.
- 28 (9) Where monies are paid into the reserves account under subsection (8),
29 the Treasury must, as soon as practicable, repay the monies to the
30 General Revenue from monies in the Fund after appropriate provision
31 has been made in relation to –
- 32 (a) the liabilities of the Fund specified in this Act; and
- 33 (b) any prospective or contingent liabilities of the Fund for which, in
34 the opinion of the Treasury, provision should be made out of
35 those monies.
- 36 (10) The Treasury may by regulations make further provision for the
37 structure and operation of the Fund.
- 38 Tynwald procedure – approval required.

12 Responsibilities and duties of the Treasury

J2017/1/10 and drafting

- (1) The Treasury's responsibilities in relation to the Fund are limited to —
 - (a) the operation of the reserves account and the distribution account in accordance with this Act;
 - (b) payments out of the Fund to meet repayment claims;
 - (c) the management of the Fund in such a way as to enable the meeting of those repayment claims as it is prudent to expect;
 - (d) defraying the costs of the administration of this Act, subject to section 44 (costs);
 - (e) the preparation of the distribution policy and the transfer of money from the reserves account to the distribution account in accordance with the distribution policy;
 - (f) making arrangements for the distribution of Fund money in accordance with section 25 (distribution of Fund money), subject to paragraphs (c) and (d) and to the distribution policy;
 - (g) the management of the relationship with licenceholders with regard to the Fund;
 - (h) the appointment of, and management of the relationship with, any distribution organisation; and
 - (i) matters incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of money held in the Fund).
- (2) Nothing in subsection (1) affects the operation of section 19 (duties of licenceholders).

13 Investment

- (1) The Treasury may invest the Fund in such investments as it thinks prudent.
- (2) Accumulations and interest on investments under subsection (1) accrue to the Fund.
- (3) The Treasury may delegate its powers of investment under subsection (1) to persons appearing to it to be appropriately qualified to undertake that function.

14 Annual report

- (1) As soon as practicable following the first anniversary of the establishment of the Fund under section 11(1) (the Fund), and at every subsequent anniversary, the Treasury must prepare an annual report on the operation of the Fund in the preceding year and the report must be laid before Tynwald.

- 1 (2) The report specified in subsection (1) must include —
- 2 (a) the opening and closing amounts in the reserves account and the
- 3 distribution account;
- 4 (b) details of the value of transferred assets;
- 5 (c) any payments into the reserves account under section 11(7) or (8);
- 6 (d) any investment income accrued under section 13(2) (investment);
- 7 (e) the persons (if any) to whom powers of investment are delegated
- 8 under section 13(3);
- 9 (f) details of the amounts paid out of the reserves account
- 10 including —
- 11 (i) any amounts paid out under section 21(3) (licenceholder
- 12 may recover payment from Fund);
- 13 (ii) any costs as provided for under this Act;
- 14 (iii) any payments from the reserves account to the distribution
- 15 account; and
- 16 (iv) any repayments to the General Revenue under section
- 17 11(9);
- 18 (g) details of the number of repayment claims processed by
- 19 licenceholders on behalf of the Treasury and by the Treasury
- 20 under section 28 (Treasury may act in cases of default by
- 21 licenceholder);
- 22 (h) details of any payments made from the distribution account in
- 23 accordance with Part 5, including any costs of the distribution
- 24 organisation in relation to its functions under this Act; and
- 25 (i) the distribution policy.
- 26 (3) Any policies or procedures made by the Treasury concerning the
- 27 operation of the Fund may be published by the Treasury on a webpage
- 28 dedicated to the Fund, or in a manner the Treasury considers will bring
- 29 the policies and procedures to the attention of those likely to be affected
- 30 by them.

31 PART 3 — NOTICES AND TRANSFERS

32 15 Notice of dormant assets

33 J2017/1/7 and drafting

- 34 (1) Within 3 months of the start of each relevant year a licenceholder must,
- 35 in relation to assets it holds that fell dormant during the preceding
- 36 relevant year, give notice to the Treasury setting out the number of
- 37 dormant assets and balance of each dormant asset.

- 1 (2) At any time after an asset falls dormant, but in any event within the
2 period referred to in subsection (1), a licenceholder must give notice of
3 the balance of every dormant asset to the person in whose name the asset
4 is held at that person's last address known to the licenceholder, unless
5 the licenceholder reasonably believes that writing to that address may
6 lead to a risk of fraud.
- 7 (3) A notice under subsection (2) must state clearly that unless the person to
8 whom it is given makes contact with the licenceholder, the balance of the
9 dormant asset will be transferred to the Fund on or after a date stated in
10 the notice.
- 11 (4) The licenceholder may aggregate the balances of dormant assets which
12 each have a balance of below £100 for the purposes of the notice required
13 under subsection (1).
- 14 (5) The notice periods in subsections (1) and (2) are subject to Part 7
15 (transitional arrangements and assets dormant at commencement).
- 16 (6) The Treasury may, subject to subsection (3), by order specify
17 requirements in relation to the form or content of, or the information to
18 be included in, a notice under subsection (1) or (2), including any
19 different notice requirements where the balances of dormant accounts
20 have been aggregated in accordance with subsection (4).
- 21 Tynwald procedure – laying only.
- 22 (7) Upon receipt of a notice under subsection (1), the Treasury may make a
23 written request for further information about any dormant asset held by
24 the licenceholder and the licenceholder must provide the further
25 information within one month of the date of the request.
- 26 (8) Subsection (7) is subject to section 40 (data protection legislation not
27 affected).
- 28 (9) If, upon receipt of a notice from a licenceholder under subsection (1), or
29 of further information under subsection (7), the Treasury determines that
30 the balance of a particular dormant asset should not be transferred to the
31 Fund, it must notify the licenceholder that the balance of such an asset
32 should not be transferred.
- 33 (10) If the Treasury makes a request for further information from a
34 licenceholder under subsection (7), it may –
- 35 (a) vary the time for compliance with the notice and transfer
36 requirements in section 16(1) and (3) (transfer of dormant assets);
37 and
- 38 (b) revise the time period referred to in section 16(5).
- 39 (11) Subsection (10) is subject to section 16(6).

(12) If a licenceholder, in any given relevant year, holds no assets that would be the subject of a notice under subsection (1), it must, within the period specified in that subsection, notify the Treasury of that fact.

(13) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

16 Transfer of dormant assets

J2017/1/7 and drafting

(1) Subject to section 15(10), within the sixth month of a relevant year, a licenceholder must, in relation to a dormant asset to which subsection (5) does not apply, submit to the Treasury a notice of an intended transfer to the Fund.

(2) The licenceholder may aggregate the balances of dormant assets which each have a balance of below £100 for the purposes of the notice required under subsection (1).

(3) Subject to section 15(10), by the end of the sixth month in the relevant year a licenceholder must transfer to the Fund the balance of a dormant asset that is included in the notice referred to in subsection (1).

(4) A transfer under subsection (3) must comply with the requirements of section 17 (foreign currencies) with respect to an asset which is not held in the Fund currency.

(5) A licenceholder must not transfer the balance of a dormant asset under this section if at any time prior to the end of the fifth month in the relevant year (or at any other time as determined by the Treasury under section 15(10)) —

(a) an asset holder has notified the licenceholder that the asset is not dormant;

(b) the licenceholder otherwise realises that the asset is not dormant; or

(c) the Treasury has notified the licenceholder, in accordance with section 15(9), that the asset should not be transferred.

(6) If for any reason a transfer does not take place within the period mentioned in subsection (3) it must take place within the next period of 12 months following that time without any further notice being given.

(7) An asset transferred to the Fund under this section must be paid into the reserves account of the Fund.

(8) The Treasury may by order specify requirements in relation to any or all of the following —

(a) the form or content of, or the information to be included in, a notice under subsection (1), including any different notice

- 1 requirements where the balances of dormant accounts have been
 2 aggregated in accordance with subsection (2) ; and
 3 (b) the information that must accompany a transfer by the
 4 licenceholder under subsection (3).
 5 Tynwald procedure – laying only.
 6 (9) A licenceholder who fails, without reasonable excuse, to comply with
 7 this section commits an offence.
 8 Maximum penalty (summary) – a fine of level 4 on the standard scale.

9 17 Foreign currencies

10 J2017/1/8 and drafting

- 11 (1) If a dormant asset consists of money in a currency other than the Fund
 12 currency, that money must be converted to the Fund currency at the
 13 currency conversion rate no more than 2 working days before the
 14 balance of the asset is transferred to the Fund.
 15 (2) The currency conversion rate referred to in subsection (1) is the
 16 prevailing exchange rate that applies to the asset on the day of
 17 conversion according to the terms and conditions under which that asset
 18 is held by the licenceholder.

19 PART 4 – REPAYMENT CLAIMS

20 18 Rights of asset holders

21 J2017/1/9 and drafting

- 22 (1) With respect to a transferred asset, an asset holder –
 23 (a) no longer has any right against the licenceholder to payment of
 24 the transferred asset; but
 25 (b) has against the Treasury in respect of the Fund whatever right to
 26 payment of the transferred asset the asset holder would have had
 27 against the licenceholder if the transfer of that asset had not
 28 occurred.
 29 (2) The Treasury may pay the asset holder out of the Fund a sum greater
 30 than that to which the asset holder would be entitled under subsection
 31 (1)(b) if the Treasury considers it appropriate to do so, having regard to
 32 the amount of money held in the Fund and any other matter that the
 33 Treasury considers relevant pertaining to the circumstances of the claim.
 34 (3) Where a person is authorised by the Treasury in accordance with section
 35 3 of the *Government Departments Act 1987* to perform its functions under
 36 this Act, any additional payment under subsection (2) may not be made
 37 by that person without the approval of the Treasury.

- 1 (4) A transferred asset is no longer a debt owed, or an amount due, by the
2 licenceholder to the asset holder.
- 3 (5) An asset holder is not entitled to interest on the transferred asset in
4 respect of any period during which it is held in the Fund, except to the
5 extent that the Treasury otherwise by order prescribes (although the
6 licenceholder remains liable in respect of any interest that accrued before
7 the transfer but was not in fact transferred).
- 8 Tynwald procedure - approval required.
- 9 (6) Nothing in subsection (1)(b) or (7) entitles a holder of a transferred asset
10 that consisted (before it was transferred under section 16 (transfer of
11 dormant assets)) of money in a currency other than the Fund currency to
12 recover the transferred asset —
- 13 (a) in that other currency; or
- 14 (b) at an amount calculated in terms of that currency as at any time
15 other than the time of the conversion of that other currency under
16 section 17 (foreign currencies).
- 17 (7) To avoid doubt, nothing in subsection (1) or (4) affects —
- 18 (a) any liability of the licenceholder to the asset holder in respect of
19 an amount, or value, other than the transferred asset referred to in
20 whichever subsection; or
- 21 (b) the operation of section 19 (duties of licenceholders).
- 22 (8) Subject to subsection (5) and to the extent that an order made by the
23 Treasury prescribes otherwise, the terms on which, prior to transfer, the
24 transferred asset was held by a licenceholder apply to the transferred
25 asset that is held in the Fund.
- 26 Tynwald procedure — approval required.

27 19 Duties of licenceholders

28 J2017/1/11 and drafting

- 29 (1) A licenceholder must do the following in relation to a transferred asset —
- 30 (a) retain the records that the licenceholder has created or acquired
31 relating to the relevant transferred asset and to any holder of that
32 asset;
- 33 (b) receive any repayment claim for payment of that transferred asset;
- 34 (c) verify any repayment claim;
- 35 (d) calculate the amount that should be paid in respect of a
36 repayment claim;
- 37 (e) determine who is the asset holder in relation to a repayment
38 claim;
- 39 (f) pay out to the asset holder the amount that should be paid in
40 respect of a repayment claim;

- 1 (g) comply with any written directions of the Treasury given to the
 2 licenceholder under subsection (7) for the purposes of Part 3 and
 3 this Part; and
- 4 (h) provide information or assistance in respect of a transferred asset
 5 or the holder of that asset if requested by a law enforcement
 6 agency for a permitted purpose.
- 7 (2) Despite subsection (1)(f), in exceptional circumstances a licenceholder
 8 may apply in writing to the Treasury –
- 9 (a) for the transfer to the licenceholder of a sum equal to the amount
 10 payable as the result of a repayment claim prior to the
 11 licenceholder making a payment out on that repayment claim; or
- 12 (b) for the Treasury to pay from the Fund the amount due as a result
 13 of a repayment claim directly to the asset holder.
- 14 (3) The Treasury may accept or refuse any application made under
 15 subsection (2) at its discretion.
- 16 (4) Any payment out on a repayment claim under subsection (1)(f) must be
 17 made in the Fund currency.
- 18 (5) A licenceholder must act promptly to execute its responsibilities under
 19 this section.
- 20 (6) To avoid doubt, a licenceholder is responsible, in respect of dealing with
 21 a repayment claim, for satisfying all the obligations which apply to any
 22 payment to an asset holder, despite the asset claimed being a transferred
 23 asset.
- 24 (7) The Treasury may issue written directions to a licenceholder or a class of
 25 licenceholders for the purposes of Part 3 and this Part, with which the
 26 licenceholder must comply.
- 27 (8) The Treasury may by order amend subsection (1).
 28 Tynwald procedure – approval required.
- 29 (9) A reference in this section to payment of a transferred asset includes
 30 payment of any amount of interest that becomes due to the asset holder,
 31 in relation to that asset, as prescribed under section 18(5) (rights of asset
 32 holders).
- 33 (10) A licenceholder who fails, without reasonable excuse, to comply with
 34 this section commits an offence.
 35 Maximum penalty (summary) – a fine of level 4 on the standard scale.

36 20 Annual statement of repayments

37 J2017/1/12 and drafting

- 38 (1) A licenceholder must give to the Treasury, by the end of 3 months
 39 following the end of each relevant year, written notice of –

- 1 (a) the amounts that it has during that year paid out in accordance
2 with section 19(1)(f) (duties of licenceholders);
- 3 (b) the amounts that it has during that year claimed from the
4 Treasury under section 21 (licenceholder may recover payment
5 from the Fund);
- 6 (c) any application it has made during that year under section 19(2)
7 (duties of licenceholders) and the amount of any sum transferred
8 to the licenceholder or any payment made directly to the asset
9 holder during that year as a result of that application; and
- 10 (d) the number of repayment claims it has received during that year
11 in respect of which it has not made any payment.
- 12 (2) If no repayment claims were received, no applications under section
13 19(2) made, or no amounts paid out or claimed as referred to in
14 subsection (1)(a) or (b) during the relevant year, the written notice
15 required under subsection (1) must confirm that fact.
- 16 (3) The Treasury may by order specify the form or content of, and the
17 information to be included in, the written notice referred to in subsection
18 (1).
- 19 Tynwald procedure — laying only.
- 20 (4) A licenceholder who fails without reasonable excuse to comply with this
21 section commits an offence.
- 22 Maximum penalty (summary) — a fine of level 4 on the standard scale.

23 **21 Licenceholder may recover payment from the Fund**

24 J2017/1/13 and drafting

- 25 (1) Subject to subsections (2) and (4), a licenceholder may, by submitting a
26 reclaim certificate to the Treasury, apply to recover quarterly from the
27 Fund an amount equal to the amount that the licenceholder, in
28 accordance with section 19 (duties of licenceholders), has paid out on
29 repayment claims made to that licenceholder.
- 30 (2) A licenceholder may not recover from the Fund any amount to the extent
31 that —
- 32 (a) the amount was paid out on a repayment claim more than 3 years
33 before the application under subsection (1) is made; or
- 34 (b) the amount was paid out in error.
- 35 (3) The Treasury must pay from the reserves account of the Fund any
36 amount that the Treasury is satisfied has been the subject of an
37 application made in accordance with the requirements of this section and
38 any order made under subsection (4).
- 39 (4) The Treasury may by order —

- 1 (a) specify the form and content of, and the information to be
 2 included in, a reclaim certificate and any procedures relating to
 3 the submission of a reclaim certificate; and
- 4 (b) provide that an application made under subsection (1) —
- 5 (i) be made in respect of aggregates of amounts instead of
 6 individual amounts; and
- 7 (ii) be made at, within or in respect of any specified time or
 8 times.
- 9 Tynwald procedure — laying only.

10 **22 Licenceholder acts as agent of the Treasury**

11 J2017/1/19 and drafting

- 12 (1) A licenceholder acts as the agent of the Treasury in relation to the Fund
 13 in respect of the following matters —
- 14 (a) repayment claims;
- 15 (b) payments paid out on repayment claims;
- 16 (c) relationships with asset holders;
- 17 (d) record-keeping; and
- 18 (e) the fulfilment of any legal or regulatory obligations arising out of
 19 the relationship with an asset holder.
- 20 (2) The Schedule has effect with respect to the terms on which a
 21 licenceholder acts as the agent of the Treasury under this section.
- 22 (3) Despite subsection (2), the Treasury may agree with a licenceholder
 23 additional terms as the Treasury considers appropriate.
- 24 (4) Unless terminated with the consent of the Treasury, the terms upon
 25 which a licenceholder acts as agent of the Treasury set out in the
 26 Schedule (and any additional terms agreed under subsection (3)) are
 27 binding on a liquidator or any other person acting in the place of the
 28 licenceholder under Part 6.
- 29 (5) A licenceholder's role as agent under this section may not be assigned or
 30 transferred by contract except as approved by the Treasury.

31 **23 Costs of licenceholder**

32 J2017/1/14 and drafting

- 33 (1) A licenceholder may deduct from the value of an asset reasonable fees
 34 and expenses incurred in respect of carrying out its functions under this
 35 Act to the extent provided for in terms and conditions that are binding
 36 on the asset holder.
- 37 (2) Where a licenceholder deducts fees and expenses under subsection (1),
 38 the licenceholder must refund those fees and expenses to the asset holder

1 on a payment out to the asset holder of the amount to which the asset
2 holder is entitled in respect of a repayment claim.

3 (3) Save as provided for in subsection (1) or elsewhere in this Act, a
4 licenceholder may not deduct from any amount transferred to, recovered
5 from or to be paid from, the Fund, any amount in respect of the
6 licenceholder's costs in connection with the performance of its functions
7 under this Act.

8 (4) To avoid doubt, a refund of fees and expenses under subsection (2) must
9 not be deducted by a licenceholder from any amount transferred to,
10 recovered from or to be paid from, the Fund.

11 PART 5 — DISTRIBUTION

12 24 Distribution policy

13 (1) After consulting with such persons as it considers appropriate, the
14 Treasury must establish a policy which provides the method for
15 determining —

16 (a) when assets may be transferred from the reserves account into the
17 distribution account;

18 (b) when a distribution may be made from the distribution account;
19 and

20 (c) the amount of assets, if any, which may be made available for
21 distribution.

22 (2) The policy referred to in subsection (1) is known as the “distribution
23 policy”.

24 25 Distribution of Fund money

25 J2017/1/20 and drafting

26 (1) The purposes for which the funds in the distribution account may be
27 distributed are —

28 (a) to pay the costs of a distribution organisation incurred in the
29 performance of its functions under this Act; and

30 (b) charitable purposes specified in subsection (7).

31 (2) For the purposes of enabling the distribution organisation to carry out its
32 functions in subsection (3), the Treasury may distribute funds in the
33 distribution account to the distribution organisation.

34 (3) The Treasury must by order appoint a distribution organisation not
35 connected with the management of the Fund to —

- 1 (a) determine the persons or bodies for whose charitable purposes
2 amounts from the Fund must be distributed in accordance with
3 this section and any order made under subsection (8); and
4 (b) distribute those amounts to those persons or bodies.
5 Tynwald procedure — approval required.
- 6 (4) An order made under subsection (3) must —
7 (a) include the terms of appointment of the distribution organisation;
8 and
9 (b) provide that the distribution organisation may recover its
10 reasonable costs incurred in the performance of its functions
11 under this Act.
- 12 (5) An order under subsection (3) may —
13 (a) provide for procedures to be followed on the receipt of a
14 complaint regarding any decision or action of the distribution
15 organisation with respect to a distribution under this Act; and
16 (b) impose any requirements on the distribution organisation to
17 permit a review by specified persons and for specified purposes
18 of records held by the distribution organisation which are related
19 to distributions made under this Act.
- 20 (6) The distribution organisation, for the duration of its appointment as the
21 distribution organisation, is not eligible to receive any money from the
22 Fund on its own account for a purpose specified in subsection (1)(b).
- 23 (7) In accordance with the distribution policy, the distribution organisation
24 must distribute amounts —
25 (a) for charitable purposes which achieve any of the following
26 objectives —
27 (i) the advancement of the arts, culture, heritage or science in
28 the Island;
29 (ii) the advancement of education in the Island;
30 (iii) the advancement of health in the Island; or
31 (iv) the advancement of environmental protection or
32 improvement in the Island; or
33 (b) for any other charitable purposes carried on in the Island by a
34 registered charity.
- 35 (8) The Treasury may by order specify the proportions in which amounts
36 may be distributed to the charitable purposes referred to in subsection
37 (7).
38 Tynwald procedure — approval required.

(9) For the purposes of this Part, distributing funds for a purpose includes distributing funds to establish, contribute to, or endow (including permanently endow) in connection with the purpose.

(10) As soon as practicable following the first anniversary of its appointment, and every subsequent year, the distribution organisation must report to the Treasury on its activities under this section during the preceding year.

(11) The report referred to in subsection (10) must be laid before Tynwald as soon as practicable and must include —

- (a) the identity of all recipients of distributions;
- (b) the amounts paid to each recipient;
- (c) the purposes for which the distributions were made; and
- (d) audited accounts relating to the distribution organisation's activities under this section.

The report must be published on the webpage dedicated to the Fund.

(12) In this section —

- (a) “charitable purposes” has the same meaning as in section 14 of the *Charities Act 1962*; and
- (b) “registered charity” has the same meaning as in section 15 of the *Charities Registration Act 1989*.

(13) The Treasury may by order —

- (a) amend the objectives set out in subsection (7)(a); and
- (b) amend subsection (12) in so far as may be necessary or desirable in consequence of any change to the law relating to charities in the Island.

Tynwald procedure — approval required.

PART 6 – DEFAULT OF LICENCEHOLDER

26 Rights of asset holder preserved on insolvency etc of licenceholder

P2008/31/11

Where after an asset holder has acquired a right to payment under section 18(1)(b) (rights of asset holders) —

- (a) the licenceholder in question is dissolved or wound up; or
- (b) for any other reason the liability that the licenceholder would have to the asset holder (but for the transfer of an asset under Part 3 or Part 7) is extinguished or reduced,

the dissolution, winding up, extinguishment or reduction is to be disregarded for the purposes of section 18(1)(b).

27 Default by licenceholder

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J2017/1/15 and drafting

Subject to the provisions of this Part, the operation of Part 4 is not affected by the fact that a licenceholder has —

- (a) become bankrupt;
- (b) transferred any part of its relevant business;
- (c) ceased to trade; or
- (d) for any other reason ceased to be a licenceholder within the meaning given in this Act.

28 Treasury may act in cases of default by licenceholder

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J2017/1/15

If the Treasury believes that any function referred to in section 19(1)(a) to (f) or (h) (duties of licenceholders) is not being performed by or in respect of a licenceholder, the Treasury may perform the function instead.

29 Operation of repayment claims in cases of default by licenceholder

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J2017/1/15 and drafting

(1) If a licenceholder —

- (a) transfers any part of its business to another entity or moves it to another branch of the same licenceholder, the person to whom that business is transferred or moved must comply with the requirements of subsection (2);
- (b) ceases to trade in the Island, the licenceholder must make arrangements to ensure compliance with the requirements of subsection (2); or
- (c) becomes bankrupt, the liquidator must comply with the requirements of subsection (2).

(2) The requirements are —

- (a) to ensure that section 19(1)(b) to (h) (duties of licenceholders) are complied with; and
- (b) to hold the records of the relevant business of the licenceholder and make them accessible from within the Island,

for a period, unless regulations made under section 30(a) or (b) provide to the contrary, of 6 years, beginning with the date of whichever is the relevant event in subsection (1).

(3) Where a liquidator or any other person acts in the place of a licenceholder under this section, a reference to “licenceholder” in sections 19(2) to (10), 20 and 21 includes the liquidator or person.

(4) Any costs of a liquidator, whenever incurred, in complying with the requirements of —

- (a) this section; and
- (b) section 22(4) (licenceholder acts as agent of the Treasury),
- have the same priority as the costs, charges and expenses payable in the winding up of a company under Part V of the *Companies Act 1931*.

30 Regulations in cases of default by licenceholder

J2017/1/23 and 11

The Treasury may by regulations make provision for the following matters in cases where any of the circumstances in section 27(a) to (d) (default by licenceholder) apply to a licenceholder –

- (a) the provision, or modification, of the duties, liabilities and rights of a liquidator or other person who acts in relation to a licenceholder;
- (b) the performance of the functions of a licenceholder under this Act;
- (c) the rights and priorities of holders of dormant assets, and of other persons with an interest in those assets;
- (d) the appointment or constitution, and functions under this Act, of a person who may perform the functions of the licenceholder under this Act;
- (e) the remuneration or funding of a person appointed under paragraph (d), including remuneration or funding from the bankrupt estate of the licenceholder or from the licenceholder's assets or former assets or from the Fund; and
- (f) the provision for priority as between a person appointed under paragraph (d) and creditors of the relevant licenceholder.

Tynwald procedure – approval required.

PART 7 – TRANSITIONAL ARRANGEMENTS AND ASSETS DORMANT AT COMMENCEMENT

31 Transitional arrangements

J2017/1/29 and drafting

- (1) Where before this section comes into operation –
- (a) a licenceholder has no system in place for identifying dormant assets; or
- (b) a licenceholder has a system in place that identifies assets held by the licenceholder as dormant for a period other than the period specified in section 7(1)(a) (meaning of “dormant”),
- the licenceholder does not contravene Part 3 until 5 years after the coming into operation of that Part.

- 1 (2) Subsection (1) is subject to subsection (3).
- 2 (3) Subsection (1) does not apply if the licenceholder is able by taking
3 reasonable steps to discover whether or not any assets held by it are
4 dormant other than by a manual check of each asset it holds (for example
5 by means of a computerised search using its existing systems).
- 6 (4) Where a new licenceholder becomes subject to this Act —
- 7 (a) subsections (1) and (3) apply to the licenceholder with respect to
8 the system or lack of system for identifying dormant assets that
9 the licenceholder has in place on becoming subject to this Act; and
- 10 (b) the 5 years referred to in subsection (1) relates to the time after
11 which the licenceholder has become subject to this Act.
- 12 (5) A licenceholder to which subsection (1) applies (whether or not by virtue
13 of subsection (4)) must give written notice to the Treasury of —
- 14 (a) the particular transitional arrangement in subsection (1) that it
15 relies upon;
- 16 (b) when the licenceholder expects to be in a position to comply with
17 the requirements of Part 3; and
- 18 (c) when that date is known, the date when the licenceholder will
19 cease to rely upon the transitional arrangement and comply with
20 the requirements of Part 3.

21 **32 Assets dormant at commencement**

- 22 (1) In this Act, an asset is “dormant at commencement” if —
- 23 (a) the asset is held by a licenceholder and the asset became dormant
24 before the first relevant year;
- 25 (b) the asset is held by a licenceholder relying upon the transitional
26 arrangements in section 31 and the asset became dormant before
27 the relevant year in which the licenceholder begins to comply
28 with Part 3; or
- 29 (c) the asset is held by an entity that becomes a licenceholder after the
30 coming into operation of Part 3 and the asset became dormant
31 before the relevant year in which the entity becomes a
32 licenceholder and subject to this Act.
- 33 (2) In this Act, the “applicable dormant at commencement date” is —
- 34 (a) in the circumstances described in subsection (1)(a), the date Part 3
35 comes into operation;
- 36 (b) in the circumstances described in subsection (1)(b), the date the
37 licenceholder becomes liable to comply, or if earlier the date the
38 licenceholder complies, with the requirements in Part 3;
- 39 (c) in the circumstances described in subsection (1)(c), the date that
40 Part 3 applies to the licenceholder.

1 33 Notices to holders of assets dormant at commencement

- 2 (1) A licenceholder must give notice of the balance of every asset dormant at
3 commencement to the person in whose name the asset is held at that
4 person's last address known to the licenceholder, unless the
5 licenceholder has a reasonable belief that writing to that address may
6 lead to a risk of fraud.
- 7 (2) A notice under subsection (1) must state clearly that unless the person to
8 whom it is given makes contact with the licenceholder, the balance of the
9 dormant asset will be transferred to the Fund on or after a date stated in
10 the notice.
- 11 (3) The Treasury may, subject to subsection (2), by order specify any
12 particular requirements in relation to the form or content of, or the
13 information to be included in, a notice made under subsection (1).
- 14 Tynwald procedure — laying only.
- 15 (4) A licenceholder must comply with subsection (1) —
16 (a) after the applicable dormant at commencement date; or
17 (b) if the licenceholder is relying upon the transitional arrangements
18 in section 31, after the licenceholder commences the application of
19 those arrangements,
20 and in either case before giving the notice to the Treasury required under
21 section 34(1).
- 22 (5) A licenceholder who fails, without reasonable excuse, to comply with
23 this section commits an offence.
- 24 Maximum penalty (summary) — a fine of level 4 on the standard scale.

25 34 Notices in respect of assets dormant at commencement

- 26 (1) A licenceholder must give notice to the Treasury of the assets it holds
27 that are dormant at commencement within 12 months of the applicable
28 dormant at commencement date.
- 29 (2) A licenceholder may give notice under subsection (1) by one notice on a
30 single occasion or by way of a series of notices within the period
31 specified in that subsection.
- 32 (3) The Treasury may by order specify requirements in relation to the form
33 or content of, or the information to be included in, a notice under
34 subsection (1).
- 35 Tynwald procedure — laying only.
- 36 (4) Upon receipt of a notice under subsection (1), the Treasury may make a
37 written request for further information regarding any assets dormant at
38 commencement about which it has been notified, and a licenceholder

- 1 must provide the further information within one month of the date of the
2 request.
- 3 (5) If the Treasury makes a request for further information from a
4 licenceholder under subsection (4), it may vary the time for compliance
5 with the notice and transfer requirements in section 35(3) and (5).
- 6 (6) The Treasury may vary the notice period in subsection (1) on an
7 application by a licenceholder if it appears to the Treasury appropriate in
8 all the circumstances.
- 9 (7) A licenceholder who fails, without reasonable excuse, to comply with
10 this section commits an offence.
- 11 Maximum penalty (summary) — a fine of level 4 on the standard scale.

12 **35 Transfer of assets dormant at commencement**

- 13 (1) Following receipt of a notice under section 34(1) (notices in respect of
14 assets dormant at commencement) or further information under section
15 34(4), the Treasury may determine that the balance of a particular
16 dormant asset should not be transferred to the Fund.
- 17 (2) The Treasury must inform the licenceholder if the balance of a particular
18 asset that is dormant at commencement should not be transferred to the
19 Fund by the end of 3 months after receiving the notice referred to in
20 section 34(1) relating to the asset.
- 21 (3) Unless —
- 22 (a) an asset holder has notified the licenceholder that the asset is not
23 dormant;
- 24 (b) the licenceholder otherwise realises that the asset is not dormant;
25 or
- 26 (c) the Treasury has notified the licenceholder, in accordance with
27 subsection (2), that the asset should not be transferred,
- 28 a licenceholder must, in relation to assets dormant at commencement,
29 submit to the Treasury a notice of intended transfer to the Fund within
30 the fourth month following the giving of the notice referred to in section
31 34(1).
- 32 (4) The Treasury may by order specify requirements in relation to the form
33 or content of, or the information to be included in, a notice under
34 subsection (3).
- 35 Tynwald procedure — laying only.
- 36 (5) The balance of an asset dormant at commencement must, unless any of
37 subsection (3)(a) to (c) applies to the asset, be transferred to the Fund by
38 the end of the fourth month following the giving of the notice referred to
39 in section 34(1).

- 1 (6) Section 17 (foreign currencies) applies to a transfer made under
2 subsection (5).
- 3 (7) The time periods specified in subsections (3) and (5) are subject to any
4 variation made by the Treasury under section 34(5).
- 5 (8) A licenceholder who fails, without reasonable excuse, to comply with
6 this section commits an offence.
- 7 Maximum penalty (summary) — a fine of level 4 on the standard scale.

8 PART 8 – MISCELLANEOUS

9 36 Disclosure of information

10 J2017/1/17 and drafting

- 11 (1) A licenceholder (or any other person who holds any records of a
12 licenceholder that relate to dormant assets or the holders of dormant
13 assets held or formerly held with the licenceholder) must allow the
14 Treasury (or other person authorised in writing by the Treasury for the
15 purposes of this section) to have access to any records of the
16 licenceholder where that access is necessary for the performance of the
17 Treasury's functions under this Act.
- 18 (2) The requirement imposed by subsection (1) has effect despite any
19 obligation as to confidentiality or other restriction on the disclosure of
20 information imposed by statute, contract or otherwise.
- 21 (3) The Treasury and law enforcement agencies may exchange information
22 relating to dormant assets or the holders of dormant assets acquired
23 under this section or section 19(1)(h), but only where this is necessary for
24 a permitted purpose.
- 25 (4) A licenceholder who fails without reasonable excuse to comply with
26 subsection (1) commits an offence.
- 27 Maximum penalty (summary) — a fine of level 4 on the standard scale.
- 28 (5) This section is subject to section 40 (data protection legislation not
29 affected).

30 37 Offences in connection with information

31 J2017/1/24 and drafting

- 32 (1) A person commits an offence if —
- 33 (a) the person provides information to the Treasury, or to any other
34 person entitled to information under this Act —
- 35 (i) in connection with an application or repayment claim;
- 36 (ii) in purported compliance with a requirement imposed by
37 or under this Act; or

- 1 (iii) otherwise than as mentioned in sub-paragraphs (i) and (ii)
 2 but in circumstances in which the person providing the
 3 information intends, or could reasonably be expected to
 4 know, that the information would be used in the exercise
 5 of functions under this Act by the Treasury or another
 6 person;
- 7 (b) that information is false or misleading in a material particular;
 8 and
- 9 (c) the person knows that, or is reckless as to whether, the
 10 information is false or misleading in a material particular.

11 Maximum penalty —

- 12 (a) (summary) — 6 months' custody or a fine of level 5 on the
 13 standard scale, or both; or
- 14 (b) (on information) — 2 years' custody or a fine, or both.
- 15 (2) A person commits an offence if the person fails, without reasonable
 16 excuse, to comply with a requirement imposed by or under this Act to
 17 provide information in connection with an application or repayment
 18 claim to the Treasury or to any other person entitled to the information
 19 under this Act.

20 Maximum penalty (summary) — a fine of level 4 on the standard scale.

21 **38 Functions under Act not deposit-taking or financial services business**

22 J2017/1/21 and drafting

23 The performance—

- 24 (a) by the Treasury or another person of any function that the
 25 Treasury may perform under this Act; or
- 26 (b) of any function of the distribution organisation under this Act,

27 does not constitute deposit-taking or investment business within the meaning of
 28 the Regulated Activities Order and any instrument or Manx legislation from
 29 time to time replacing that Order.

30 **39 Limitation of liability**

31 J2017/1/22 and drafting

- 32 (1) Despite section 22(1) (licenceholder acts as agent of the Treasury) the
 33 Treasury, its officers or agents (excluding the licenceholder where the
 34 licenceholder acts as an agent of the Treasury) are not liable for the
 35 actions of the licenceholder, its officers or agents in respect of any of the
 36 licenceholder's obligations under this Act, other than in respect of its
 37 obligation under section 19(1)(f) (duties of licenceholders).
- 38 (2) The Treasury, its officers or agents are not liable to a licenceholder or any
 39 of its asset holders as a result of any action taken in relation to the Fund
 40 that would otherwise arise under another enactment.

1 (3) Without limiting subsections (1) and (2), the Treasury, its officers or
2 agents are not liable in damages for anything done or omitted in the
3 discharge or purported discharge of any function under, or authorised
4 by or under, this Act unless it is shown that the act or omission was in
5 bad faith.

6 (4) To avoid doubt, this section applies to any person authorised by the
7 Treasury in accordance with section 3 of the *Government Departments Act*
8 *1987* to perform any of its functions under this Act.

9 **40 Data protection legislation not affected**

10 (1) Nothing in this Act authorises a disclosure, in contravention of the
11 provisions of the data protection legislation, of personal data which is
12 not exempt from those provisions.

13 (2) In this section, “data protection legislation” has the meaning given in
14 regulation 5(1) of the GDPR and LED Implementing Regulations 2018³ as
15 they have effect from time to time.

16 **41 Other obligations not affected**

17 Unless otherwise expressly provided for in this Act, nothing in this Act affects
18 the operation of any other duty to comply with requirements under any other
19 enactment, or any other obligation imposed by law.

20 **42 Statutory documents**

21 (1) The Treasury may make orders and regulations —

22 (a) in accordance with this Act; or

23 (b) otherwise as are necessary or expedient to give effect to this Act.

24 Tynwald procedure for orders or regulations made under paragraph (b)
25 — approval required.

26 (2) Without limiting subsection (1), the Treasury may by order make
27 provision for or with respect to any of the following —

28 (a) amending any expression of time (whether numerical or
29 otherwise) in this Act;

30 (b) notices, returns and reports to be furnished by licenceholders or
31 other persons to the Treasury for the purposes of this Act; and

32 (c) for costs to be charged in specified circumstances for the benefit of
33 the Fund for processing a repayment claim to a former asset
34 holder whose dormant asset has been transferred to the Fund.

35 (3) Orders and regulations made under this Act may —

³ SD 2018/0145

- 1 (a) provide for their contravention to be an offence punishable by a
2 fine of level 4 on the standard scale;
- 3 (b) permit a person to exercise a discretion in respect of any matters
4 specified in the order or regulations;
- 5 (c) contain any consequential, incidental, supplemental, transitional
6 and saving provisions that the Treasury considers necessary or
7 expedient for the purposes of the order or regulations.

8 **43 Bona vacantia**

9 J2017/1/26

- 10 (1) Nothing in this Act affects the operation of the rule of law regarding *bona*
11 *vacantia* or any claim that the Treasury may have in respect of *bona*
12 *vacantia*.
- 13 (2) Accordingly, the Treasury may be paid from the Fund any amount of a
14 transferred asset paid to the Fund where the amount corresponds to the
15 amount of property that is *bona vacantia*.

16 **44 Costs**

- 17 (1) The Treasury, or any person authorised by the Treasury in accordance
18 with section 3 of the *Government Departments Act 1987* to perform any of
19 its functions under this Act, may recover from the reserves account of the
20 Fund reasonable costs incurred in the performance of functions under
21 this Act.
- 22 (2) The costs referred to in subsection (1) may, in the case of a person
23 authorised by the Treasury, include reasonable remuneration for the
24 performance of functions under this Act as agreed with the Treasury.

1

SCHEDULE

2

TERMS OF AGENCY

3

(Section 22(2))

4

1 The Treasury as manager of the Fund

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The Treasury in this Schedule means the Treasury acting in its capacity as manager of the Fund and references to the Treasury should be construed accordingly.

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2 Duration of agency

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The agency commences on a date on which a licenceholder first transfers any balance of a dormant asset to the Fund and continues until terminated by a written agreement between the licenceholder and the Treasury, on terms as may be agreed between those parties.

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3 Reimbursement of the Treasury

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If the Treasury incurs any costs, expenses or damages as a result of a failure of a licenceholder to comply with this Act, the licenceholder is liable to reimburse the Treasury.

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4 Licenceholder's general obligations

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A licenceholder must meet the general obligations of an agent towards its principal, including in particular —

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(a) to act in relation to the Fund conscientiously and in good faith and not allow its interests to conflict with its duties under the Act;

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(b) not to do or fail to do anything that would adversely affect the reputation or goodwill of the Treasury;

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(c) except as authorised by the Treasury, not to act in a way that will incur any liabilities on behalf of the Treasury nor increase the Treasury's liability to asset holders in any way, nor to pledge or purport to pledge the credit of the Treasury; and

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(d) to comply with all reasonable and lawful instructions of the Treasury concerning this Act, in particular the management of repayment claims, and generally to carry out its agency in such manner as it thinks best to further the purpose of the Act.

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5 Record keeping requirements

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(1) A licenceholder must ensure that it retains all relevant records in respect of a holder of an asset held with the licenceholder which has been

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1 classified as dormant, the balance of which has been transferred to the
2 Fund.

- 3 (2) An asset holder described in sub-paragraph (1) is referred to in this
4 Schedule as a “transferred asset holder”.

5 **6 Relations with transferred asset holders**

6 A licenceholder must—

- 7 (a) ensure that it complies with all legal and regulatory requirements
8 applicable from time to time in respect of the relationship with a
9 transferred asset holder;
- 10 (b) respond to any contact from a transferred asset holder but
11 nothing in sub-paragraph (a) or this sub-paragraph requires the
12 licenceholder to initiate any contact with a transferred asset
13 holder directly;
- 14 (c) manage and process, in accordance with the licenceholder’s
15 policies and procedures and any legal and regulatory
16 requirements applicable from time to time, all queries and
17 complaints from a transferred asset holder (or the transferred
18 asset holder’s successors or personal representatives) in relation to
19 a dormant asset balance that has been transferred to the Fund;
- 20 (d) manage and settle any dispute between the transferred asset
21 holder and the licenceholder in relation to the amount payable to
22 the transferred asset holder, whether in respect of a principal sum
23 or interest, in respect of a dormant asset balance that has been
24 transferred to the Fund;
- 25 (e) notify the Treasury quarterly of any dispute with a transferred
26 asset holder in relation to the amount due to the transferred asset
27 holder in respect of any transferred dormant asset balance, giving
28 a summary of the complaint; and
- 29 (f) manage any dispute with a transferred asset holder in relation to
30 which the Treasury has been notified under sub-paragraph (e).

31 **7 Repayment claims**

32 When dealing with a repayment claim, a licenceholder must —

- 33 (a) ensure the correct validation, calculation, processing and payment
34 (if applicable) of the repayment claim from a transferred asset
35 holder in accordance with the terms and conditions of the relevant
36 asset, the licenceholder’s policies and procedures, and the
37 provisions of this Act; and
- 38 (b) complete all checks and investigations required at the time of the
39 repayment claim by a transferred asset holder for the purposes of
40 verifying the transferred asset holder’s identity in accordance

1 with all applicable law relating to anti-money laundering or the
2 countering of terrorist financing and ensure that payment to the
3 transferred asset holder is not prohibited by those requirements or
4 by any other enactment.

5 **8 Further obligations of the licenceholder**

- 6 (1) Where a licenceholder submits a notice to the Treasury, including a
7 reclaim certificate, it warrants that the information provided is true,
8 accurate and complete in all respects.
- 9 (2) A licenceholder must provide to the Treasury such information
10 regarding its compliance with this Act as the Treasury may reasonably
11 require.
- 12 (3) A licenceholder must permit any person appointed by the Treasury to
13 verify the licenceholder's compliance with the Act and may be required
14 to pay the fees of such person.

15 **9 Liability of the Treasury**

- 16 (1) If a licenceholder has agreed to pay a transferred asset holder an amount
17 in respect of a repayment claim that is greater than the amount of the
18 Treasury's liability under this Act, the Treasury is not liable to reimburse
19 the licenceholder for the full amount actually paid to the transferred
20 asset holder by the licenceholder.
- 21 (2) The Treasury has no liability to a transferred asset holder —
- 22 (a) arising as a result of any error, failure or breach by a licenceholder
23 (including any possible failure by the licenceholder to observe the
24 terms and conditions applicable to the transferred asset holder)
25 that exceeds the maximum sum; and
- 26 (b) for any error, failure or breach by the licenceholder as agent of the
27 Treasury under this Act.
- 28 (3) In sub-paragraph (2)(a), "the maximum sum" means the amount
29 transferred to the Fund by the licenceholder together with any interest
30 due to which the transferred asset holder is entitled under section 18(5)
31 (rights of asset holders).
32

IN THE COUNCIL

DORMANT ASSETS BILL 2018

A **BILL** to provide for the establishment of a fund into which the balances of certain dormant assets may be transferred; and for the distribution of money in that fund for charitable and other purposes, subject to a right to reclaim those balances from the fund; and for connected purposes.

Brought from the Keys on 26 February 2019 and reprinted to incorporate amendments made by the Keys

MR HENDERSON

FEBRUARY 2019