LEGISLATIVE CONSENT MEMORANDUM

THE DORMANT BANK AND BUILDING SOCIETY ACCOUNTS BILL

Draft Legislative Consent Motion

1. The draft motion is:

   **The UK Dormant Bank and Building Society Accounts Bill:** That the Parliament supports the principle of clauses in the Dormant Bank and Building Society Accounts Bill, introduced to the House of Lords on 7 November 2007, providing for the collection and distribution of sums released from dormant bank and building society accounts for social and environmental purposes and agrees that the provisions in the Bill that relate to the distribution of such sums in Scotland should be considered by the UK Parliament.

Background

2. This memorandum has been lodged by John Swinney, Cabinet Secretary for Finance and Sustainable Growth, under rule 9B.3.1a of the Parliament’s Standing Orders. The UK Dormant Bank and Building Society Accounts Bill was introduced in the House of Lords on 7 November 2007. The Bill can be found at:

   http://www.publications.parliament.uk/pa/pabills/200708/dormant_bank_and_building_society_accounts.htm

Legislation

3. The UK Government has been in discussion with the banking industry on the possibility of accessing funds from dormant bank accounts to invest these back into society. Dormant bank accounts are defined as those which have seen no customer-initiated activity for at least 15 years.

4. The UK Government now proposes legislation to enable the collection and distribution of these funds for ‘social and environmental purposes’. While the elements of the Bill that consider the collection of funds are reserved matters and fall to UK Parliament to consider, the Bill also proposes a power for Scottish Ministers to direct expenditure in Scotland and outlines the necessary formal structures for exercising these powers in Scotland.

5. The released funds are intended to remain outwith direct public expenditure. The Bill contains proposals to manage funding by extending the responsibilities of the Big Lottery Fund (BIG) as an appropriate independent and experienced administrator.

6. BIG is a UK NDPB distributing 50% of all National Lottery funding for meeting expenditure that is charitable or is connected with health, education or the environment. The Fund has extensive devolved arrangements under the National Lottery Act 2006. A Scottish Member on the UK Board chairs the separate Scotland Committee of 10 members, appointed by the Fund subject to the consent of Scottish Ministers. The Scotland Committee distributes the Scottish devolved budget for the Fund (£257m over 3 years to spring 2009) under policy directions issued by Scottish Ministers.
7. The Bill proposes use of this structure and incorporates an order making power for Scottish Ministers to indicate priority areas for expenditure. This will remain completely separate from Lottery fund distribution and BIG will prepare separate reports and keep accounting records for distribution of funding linked to dormant bank and building society accounts.

Provisions which relate to Scotland

8. The main body of the UK Dormant Bank and Building Society Accounts Bill is divided into two parts. This section summarises each part and highlights the provisions made which will impact on Scottish interests.

Part 1: Transfer of Balances in Dormant Accounts

Main Purpose:
- to enable the transfer of balances in dormant accounts to a reclaim fund;
- to propose and outline the form of an alternative scheme for smaller institutions; and
- to outline the role of the reclaim fund.

9. Part one of the Bill covers issues wholly reserved to the UK Parliament. This section sets out the proposals to allow assets in dormant accounts to be collected and transferred to a new intermediary body (the reclaim fund) which would take responsibility for repayment of assets and any interest due where legitimate claims are made to reclaim transferred assets. This body would be responsible for maintaining adequate levels of assets to meet future claims, and in turn for making funds available for onward distribution through the methods proposed in Part two of the Bill.

10. Since the provisions in Part one are reserved Scotland has no particular additional interest and no LCM is required in relation to these provisions in the UK Bill.

Part 2: Distribution of Money under the General Scheme

Main Purpose:
- to enable the Big Lottery Fund (BIG) to act as an independent distributor of funds from dormant accounts;
- to outline the mechanism for apportioning funds between the UK Government and devolved administrations for distribution;
- to confer functions on UK Ministers, Scottish Ministers and Ministers of other devolved administrations to make orders directing distribution; and
- to confer functions on UK Ministers, Scottish Ministers and Ministers of other devolved administrations to issue directions to BIG and to instruct BIG to prepare strategic plans.

11. Part two of the Bill contains provisions for the onward distribution of excess funds transferred to the reclaim fund. These confer additional functions on Scottish Ministers to set priorities for the distribution of funds in relation to Scotland. It is considered that the conferral of these functions would alter the executive competence of Scottish Ministers and consequently requires a Legislative Consent Motion.
Legislative Consent Motion

12. Ministers consider that a Legislative Consent Motion (LCM) is required in this instance as the proposed functions in Part one of the Bill are wholly reserved matters where the Scottish Parliament cannot legislate. An LCM will allow the UK Parliament to confer functions on Scottish Ministers to make orders directing the distribution of funds, and to instruct BIG to prepare a strategic plan for Scotland. This approach would allow coordinated action across the UK in developing a coherent approach for collection and distribution and ensure earliest possible access to an additional and independent funding stream for Scotland.

13. If accepted, the provisions in the UK Bill will:

- Provide Scottish Ministers with an order-making power (subject to affirmative procedure) to set priorities for expenditure;
- enable Scottish Ministers to direct expenditure through BIG; Ministers will be required to consult with BIG before issuing any direction;
- empower Scottish Ministers to instruct BIG to prepare, adopt, review, modify or replace a strategic plan in relation to the money available for Scotland;
- require Scottish Ministers to lay the BIG annual report on action before the Scottish Parliament;
- require BIG to send a copy of its accounts to the Scottish Ministers. The Comptroller and Auditor General are then to examine, certify and report on these accounts and lay a copy of the statement of accounts and report before the UK Parliament;

Financial Implications

14. The UK Bill as proposed will result in an income stream that will remain outwith Government financial systems, and is not expected to affect Government finances. While the level of funds to be released is not clear at this stage, Scotland’s share will be apportioned in accordance with standard Government funding mechanisms.

Consultation

15. The anticipated funding is not expected to become available for distribution until late 2009/early 2010, subject to Parliamentary process. While priorities for expenditure in England have been announced by UK Ministers to be youth volunteering and financial inclusion, no decision has been made on Scotland’s priorities. The Scottish Government intends to consult on spending priorities shortly after the conclusion of the legislative process.

Scottish Government
November 2007