

DORMANT BANK AND BUILDING SOCIETY ACCOUNTS INSTRUMENT 2009**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme); and
 - (f) paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority);
and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2009.

Amendments to the Handbook

- D. The modules of the Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Fees manual (FEES)	Annex D
Supervision manual (SUP)	Annex E
Dispute Resolution: Complaints sourcebook (DISP)	Annex F
Compensation sourcebook (COMP)	Annex G

Amendment to Handbook-related material

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex H to this instrument.

Citation

- F. This instrument may be cited as the Dormant Bank and Building Society Accounts Instrument 2009.

By order of the Board
23 July 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- account* (in relation to a *dormant account*) has the meaning given in section 9 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary:
- (a) an account which has at all times consisted only of *money* and is provided by a *bank* or *building society* as part of its activity of *accepting deposits*; and
 - (b) in relation to a *building society*, it includes an *account* representing *shares* in the *society*, other than:
 - (i) preferential *shares*; or
 - (ii) deferred *shares* within the meaning given in section 119(1) of the Building Societies Act 1986.
- balance* (in relation to a *person's account*) has the meaning given in section 8 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary the amount owing to the *person* in respect of the *account* at any particular time, after the appropriate adjustments have been made for such things as interest due and fees and charges payable. In relation to a time after a transfer of the *balance* to a *dormant account fund operator*, the adjustments include those that would fall to be made but for the transfer or transfers.
- dormant account* has the meaning given in section 10 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary an *account* that at a particular point in time:
- (a) has been open throughout the period of 15 years ending at that time; and
 - (b) during that period no transactions have been carried out in relation to the *account* by or on the instructions of the holder of the *account*.
- dormant account funds* has the meaning given in section 5(6) of the Dormant Bank and Building Society Accounts Act 2008, which is *money* paid to a *dormant account fund operator* by a *bank* or *building society* in respect of a *dormant account*.

<i>dormant account fund operator</i>	a <i>firm</i> with <i>permission</i> for operating a <i>dormant account fund</i> .
<i>managing dormant account funds (including the investment of such funds)</i>	the <i>regulated activity</i> , specified in article 63N(1)(b) of the <i>Regulated Activities Order</i> , which is the acceptance of a transfer by a <i>bank</i> or <i>building society</i> of the <i>balance</i> of a <i>dormant account</i> , or a proportion of such a balance, and the management of those funds (including the investment of such funds) in such a way as to enable the <i>dormant account fund operator</i> to meet whatever <i>repayment claims</i> it is prudent to anticipate.
<i>meeting of repayment claims</i>	the <i>regulated activity</i> , specified in article 63N(1)(a) of the <i>Regulated Activities Order</i> , which is the meeting of <i>repayment claims</i> by a <i>dormant account fund operator</i> .
<i>operating a dormant account fund</i>	any of the <i>regulated activities</i> of: <ul style="list-style-type: none"> (a) <i>meeting of repayment claims</i>; or (b) <i>managing dormant account funds (including the investment of such funds)</i>.
<i>protected dormant account</i>	a <i>dormant account</i> which is covered by the <i>compensation scheme</i> , as defined in <i>COMP 5.3.2R</i> .
<i>repayment claim</i>	(in relation to a <i>dormant account</i>) a claim for repayment made by virtue of sections 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008, that is, in summary, that the customer has against the <i>dormant account fund operator</i> whatever right to payment of the <i>balance</i> the customer would have against the <i>bank</i> or <i>building society</i> if the transfer (or in the case of section 2(2)(b), transfers) had not happened. In this definition, ‘customer’ is the <i>person</i> who held with a <i>bank</i> or <i>building society</i> the <i>balance</i> of a <i>dormant account</i> transferred to a <i>dormant account fund operator</i> .

Amend the following definitions as shows:

<i>client</i>	...
	(6) ...
	(7) <u>(in relation to a <i>dormant account</i> transferred to a <i>dormant account fund operator</i>) a <i>person</i> entitled to the <i>balance</i> in the <i>dormant account</i> held with a <i>bank</i> or <i>building society</i> which was transferred to a <i>dormant account fund operator</i>.</u>
<i>common platform firm</i>	...

(c) a UK *MiFID investment firm* which falls within the definition of ‘local firm’ in Article 3.1P of the *Capital Adequacy Directive*; or

(d) a dormant account fund operator.

regulated activity

(in accordance with section 22 of the *Act* (The classes of activity and categories of investment)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

...

(si) meeting of repayment claims (article 63N(1)(a));

(sj) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));

...

Annex B**Amendments to the Principles for Businesses (PRIN)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.1.3 G The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits*, ~~and issuing electronic money~~ and operating a dormant account fund, the FSA will proceed only in a *prudential context*. ...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Annex 1 Detailed application of SYSC

...			
Part 2	Application of the common platform requirements (SYSC 4 to 10)		
	Who?		
...			
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:	
		...	
		(2)	in relation to the following <i>regulated activities</i> :
			...
		(f)	<i>home finance mediation activity and administering a home finance transaction; and</i>
		(g)	<i>reversion activity; and</i>
		(h)	<i><u>meeting of repayment claims and managing dormant account funds (including the investment of such funds).</u></i>

Annex D

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(p) A <i>firm</i> applying for a variation of its <i>Part IV permission</i>	<p>(1) Unless (2) <u>or (3)</u> applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES 4 Annex 1R</i> not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1R</i> which apply to that application</p> <p>(2) ...</p> <p><u>(3) If the <i>firm</i> is in the A.1 fee-block at the date of the application and the variation involves adding any of the regulated activities of meeting of repayment claims or managing dormant account funds (including the investment of such funds), the fee is 50% of the fee in <i>FEES 3 Annex 1R</i> that applies to that application</u></p> <p>(3)<u>(4)</u> In all other cases, ...</p>	On or before the date the application is made
...		

3 Annex 1 R Authorisation fees payable

...

Part 2 – Complexity Groupings Straightforward Cases

...

Complex Cases R

Complex cases	
Activity grouping	Description
A.1	<i>Deposit acceptors (excluding e-money issuers and credit unions) and dormant account fund operators</i>
...	

...

4 Annex 1 R Activity groups, tariff bases and valuation dates applicable

Part 1

This table shows how the *regulated activities* for which a *firm* has *permission* are linked to activity groups ('fee-blocks'). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
A.1 Deposit acceptors	its <i>permission</i> includes <i>accepting deposits, operating a dormant account fund</i> or <i>issuing e-money</i> ; BUT DOES NOT include either of the following: <ul style="list-style-type: none"> • <i>effecting contracts of insurance</i>; • <i>carrying out contracts of insurance</i>.
...	

Part 2

...

Activity group	Tariff base Tariff base
A.1	...
	Note:

	All references in the definition for building society MELs are to entries in the MFS1 which is submitted <i>monthly</i> by all <i>building societies</i> to the FSA. <u>For a dormant account fund operator the tariff base is not relevant and the flat fee in FEES 4 Annex 2R is payable.</u>
A.2	...
...	

4 Annex 2 R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 July 2009 to 1 July 2010

Part 1

This table shows the tariff rates applicable to each fee block

...	
Activity group	Fee payable
A.1	...
	For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, the fee is calculated as above less 30%.
	<u>The tariff rates in A.1 are not relevant for the <i>permissions</i> relating to <i>operating a dormant account fund</i>. Instead a flat fee of £6,000 is payable in respect of these <i>permissions</i>.</u>
...	

5 Annex 1 R Annual Fees Payable in Relation to 2009/10

...

Part 2: Fee tariffs for general levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> , and <i>home finance</i>	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R as at 31	£0.027 per relevant account, subject to a minimum levy of £100

<i>administrators</i> (excluding <i>firms</i> in block 14) <u>and</u> <u><i>dormant account fund</i></u> <u><i>operators</i></u>	December For an <i>e-money firm</i> , the tariff base includes the number of e-money accounts multiplied by 0.15 (7) <u>In the case of <i>dormant</i></u> <u><i>account fund operators</i>,</u> <u>the tariff base is the</u> <u>number of eligible</u> <u>activated accounts (8).</u>	
...		
Notes		
...		
8	<u>Eligible activated accounts are the number of <i>repayment claims</i></u> <u>met by the <i>dormant account fund operator</i> as at the 31 December.</u>	

...

- 6.5.15 R Where a *participant firm* can identify that a *protected deposit or a protected dormant account* was made by or belonged to a *person* who is not an *eligible claimant*, it may exclude the amount of that deposit or that account from the tariff base, provided that it notifies the *FSCS* of the amount of the deposit or the account so excluded and provides the *FSCS* with such information about the deposit or account as the *FSCS* may reasonably require.

...

6 Annex 3 R Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES* 6.5.7R and *FEES* TP 2.5.2R

Class A	Deposit
Legal basis for activity in class A	<i>accepting deposits and/or operating a dormant account fund.</i> BUT does not include any fee payer who either effects or carries out <i>contracts of insurance</i> .
Tariff base	<u>(1) Protected deposits and/or</u> <u>(2) Protected dormant accounts multiplied by 0.2 as</u> at 31 December

...

Annex E

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

	(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(4)	Bank, or building society or dormant account fund operator which in either <u>each</u> case carries on <i>designated investment business</i> (Note 2A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5)	Bank, or building society or a dormant account fund operator which in either <u>each</u> case does not carry on <i>designated investment business</i> (Note 2A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
...			

...

Firms with long term liabilities to customers

- 6.2.8 G Discussions with the FSA are particularly relevant where the *firm* has to discharge obligations to its *customers* or policyholders before it can cease carrying on a *regulated activity*. This may be the case, for example, where the *firm* is an *insurer*, a *bank*, a *dormant account fund operator*, or, as is often the case, holding *client money* or *customer assets*.
- 6.2.9 G If an ~~*insurer*~~, a ~~*bank*~~, or a *dormant account fund operator* wishes to cease carrying on all *regulated activities* for which it has *Part IV permission*, it will usually be necessary to wind down the business over a long term period which is normally more than six months. This may also be the case for a *firm* holding *client money* or *customer assets*. In these circumstances, it will usually be appropriate for the *firm* to apply for variation of its *Part IV permission* before commencing the wind-down. A *firm* should only make an application for cancellation of *permission* when it expects to complete its

wind-down (run-off) within six months.

...

- 6.4.4 G Additional guidance for a *firm* carrying on *insurance business*, *accepting deposits*, *operating a dormant account fund* or which holds *client money* or *customer's* assets is given in SUP 6 Annex 4. As noted in SUP 6.2.9G, it will usually be appropriate for a *firm* to apply for variation of its *Part IV permission* while winding down (running off) its *regulated activities* and before applying to cancel its *Part IV permission*.

...

6 Annex 4.1 G Additional guidance for a firm winding down (running off) its business

1.	If a <i>firm</i> has <i>Part IV permission</i> which enables it to hold <i>client money</i> or to carry on <i>regulated activities</i> including:	
	(a)	...
	(b)	<i>accepting deposits</i> ; or
	(c)	<i>safeguarding and administration of assets</i> ; <u>or</u>
	(d)	<u><i>meeting of repayment claims or managing dormant account funds (including the investment of such funds)</i></u> ;
	...	
...		

...

- 15.3.8 G Compliance with *Principle 11* includes, but is not limited to, giving the *FSA* notice of:

- (1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's* risk profile or resources, including, but not limited to:

...

- (e) entering into, or significantly changing, a *material outsourcing* arrangement (a *bank*, ~~and~~ a *building society* and a *dormant account fund operator* should also see SYSC 3.2.4G and SYSC 8, and an *insurer* should also see SYSC 13.9 for further details); or

...

- (h) ...; or

- (i) in relation to a dormant account fund operator, notify the FSA when the operator intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities in connection with operating a dormant account fund on a continuous and satisfactory basis;

...

...

16.1.3 R Application of different sections of SUP 16

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.10	All categories of <i>firm</i> except:	Entire section
	...	
	(b) a <i>UCITS</i> qualifier; and	
	(c) a <i>credit union</i> ; and	
	(d) <u>a dormant account fund operator.</u>	

...

Application

16.10.1 G The effect of SUP 16.1.1R is that this section applies to every *firm* except:

...

- (3) a *credit union*; or
- (4) a dormant account fund operator.

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)	(2)	(3)	(4)
-----	-----	-----	-----

RAG number	Regulated activities	Provisions containing:		
		applicable data items	reporting/frequency period	Due date
RAG 1	<ul style="list-style-type: none"> • accepting deposits • issuing electronic money • <u>meeting of repayment claims</u> • <u>managing dormant account funds (including the investment of such funds)</u>
...				

...

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to *firm type* in the table below:

Description of data item	Prudential category of firm, applicable <i>data items</i> and reporting format (Note 1)							
	Credit union	<u>Dormant account fund operator</u> (note 15)
Annual report and accounts								<u>No standard format</u>
...								
Note 1	...							

...	
<u>Note 15</u>	<u>Only applies to a <i>dormant account fund operator</i> that does not fall into any of the other prudential categories in this table.</u>

...

- 16.12.7 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.6R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual report and accounts				80 <i>business days</i> (note 1) 7 months (note 2)
...				
Note 1	Applicable to <i>UK banks, dormant account fund operators</i> and electronic money institutions.			
...				

Annex F**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(13) the complainant is a beneficiary under a trust or estate of which the *respondent* is trustee or personal representative;

(14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a *customer of a bank or building society* which transferred any *balance* from a *dormant account* to the *respondent*.

Annex G

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

1.3.3 G Areas of particular interest to claimants (see *COMP* 1.1.3G).

This Table belongs to *COMP* 1.1.3G

...		
Q2	How much compensation will I be offered?	
A2	This depends on whether your <i>protected claim</i> is:	
(1)	a claim for a <i>protected deposit</i> <u>or a <i>protected dormant account</i></u> ; or	<i>COMP</i> 5.3
...		
...		
	Different limits apply to different types of <i>claim</i> .	<i>COMP</i> 10.2.3R
Q3	How will the FSCS calculate the compensation that is offered to me?	
A3	Again, this will depend on whether your <i>protected claim</i> is:	
(1)	a claim for a <i>protected deposit</i> <u>or a <i>protected dormant account</i></u> ; <u>or</u>	<i>COMP</i> 12.2.1R, <i>COMP</i> 12.3.1R and <i>COMP</i> 12.4.1R
(2)	...; <u>or</u>	...
...		
(4)	... <u>or</u>	...
...		
...		

...

Deposits and balances in dormant accounts

- 4.3.1 R A *person* is eligible to claim compensation in respect of a *protected deposit* or a *protected dormant account* if, at the date on which the *relevant person* is determined to be *in default*:
- (1) he came within category (14) of *COMP* 4.2.2R; or
 - (2) he came within any of categories (1)-(3) of *COMP* 4.2.2R, and was not a *large company*, *large mutual association*, or a *credit institution*.

...

- 5.2.1 R A *protected claim* is:
- (1) a *claim* for a *protected deposit* or a *protected dormant account* (see *COMP* 5.3); or

...

...

5.3 **Protected deposits and protected dormant accounts**

...

- 5.3.2 R If not a *protected deposit*, a *dormant account* is a *protected dormant account* only if, immediately prior to transfer, it consisted of a *protected deposit*, the liability for which has been transferred to a *dormant account fund operator*.

...

10.2.3 R Table Limits

This table belongs to *COMP* 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit</i> or <i>protected dormant account</i>	100% of <i>claim</i>	£50,000 or €50,000 whichever is the greater on the date ...
...		

...

Claims in respect of protected dormant accounts

- 10.2.12 R In the event of a default of a *dormant account fund operator*, the *FSCS* will pay compensation in accordance with *COMP* 10.2.3R on the basis of the *authorisation* of the *relevant person* who was liable for the *protected deposit* immediately prior to the liability being transferred to the *dormant*

account fund operator (and the relevant authorisation of the relevant person is the authorisation that was in place at the time that the liability was transferred).

- 10.2.13 G The purpose of COMP 10.2.12R is to ensure that persons whose balances in a dormant account have been transferred to a dormant account fund operator do not have their entitlement to compensation reduced in the event of default of the dormant account fund operator. So, a person who held dormant accounts with two different relevant persons, the liability for which were then automatically transferred to the dormant account fund operator, could still be compensated by the FSCS on the basis of accounts with two separate relevant persons (and so could receive up to 2 x £50,000 in compensation) rather than just one account with one relevant person.

Annex H

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.3 The business element

...

2.3.2 G ...

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting* or *carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract*, ~~and entering into a home finance transaction or administering a home finance transaction~~, and operating a dormant account fund.

...

Dormant account funds

2.7.20C G There are two *regulated activities* associated with the activities of a *dormant account fund operator* under the Dormant Bank and Building Society Accounts Act 2008:

- (1) the *meeting of repayment claims*; and
- (2) managing dormant account funds (including the investment of such funds).

Agreeing

2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits*, *issuing e-money*, *effecting* or *carrying out contracts of insurance*, *operating a multilateral trading facility*, managing dormant account funds, the *meeting of repayment claims* or carrying on any of the activities that are regulated in relation to *collective investment schemes*, *stakeholder pension schemes* or *personal pension schemes*. A person will need to make sure that he has appropriate *authorisation* at the stage of agreement and before he actually carries on the underlying activity (such as the *dealing* or *arranging*).

...

2 Annex 2 G Regulated activities and the permission regime

1 Table

...

2 Table

Table 1: Regulated Activities [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Issuing electronic money	
(aa) <i>issuing electronic money</i> (article 9B)	<i>electronic money</i> (article 74A)
<u>Activities of a dormant account fund operator</u>	
(ab) <u>the meeting of repayment claims and managing dormant account funds (including the investment of such funds)</u> (article 63N)	See Note 8 to Table 1
...	
Notes to Table 1	
<p>Note 1:</p> <p>In addition to the <i>regulated activities</i> listed in Table 1, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This applies in relation to all the <i>regulated activities</i> listed in Table 1 apart from:</p> <p>...</p> <ul style="list-style-type: none"> • <i>acting as the sole depositary or sole director of an open-ended investment company</i> (article 51(1)(c)); and • <i>establishing, operating or winding up a stakeholder pension scheme or establishing operating or winding up a personal pension scheme</i> (article 52); and • <u>the meeting of repayment claims and/or managing dormant account funds (including the investment of such funds)</u> (article 63N). 	

...

Note 8:

Article 4(2) of the *Regulated Activities Order* specifies the activity at (ab) for the purposes of section 22(1)(b) of the *Act*, that is, these activities will be *regulated activities* if carried on in relation to any property and are not expressed as related to a *specified investment*.