



The Dormant Assets Bill 2018

Consultation

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Treasury

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Glossary of Terms

In addition to the definitions found in clause 3 to 6 of the draft Bill -

“Customer”	has the same meaning as “asset holder” defined within the Bill as: “means, in respect of an asset, a person (whether or not an individual) – (a) in whose name the asset is held by a licenceholder; (b) who is beneficially entitled to the asset or has the power to operate it or control it; or (c) who is entitled to demand repayment of an amount on the asset.”
The “Jersey Law”	Refers to Jersey’s Dormant Bank Accounts Law 2017
“Transferred asset”	means the whole or any part of the balance of a dormant asset which has been transferred to the fund
“Transferred asset holder”	Means the customer/asset holder whose dormant asset has transferred to the fund.

Consultation overview

Dormant Assets Bill 2018

The Treasury invites comments on the draft Dormant Assets Bill 2018 (the "Bill").

The main aim of the Bill is to enable dormant assets held by banks¹ in the Island (known as "dormant bank accounts") to be transferred to a central fund called the Dormant Assets Fund (the "fund") and to allow a proportion of the amounts transferred to be distributed for charitable purposes in the Island. Dormant bank accounts will, in general terms, include any account held by a bank where contact has been lost with the account owner for a period of at least 15 years.

The legislation will not act to disadvantage anyone who later seeks to recover their dormant asset as their right to reclaim will be preserved indefinitely (in perpetuity).

Background

Dormant assets (or accounts) regimes operate in a number of countries around the world including the UK, Ireland and Jersey. The regimes in place in the UK, Ireland and Jersey relate to dormant bank and building society accounts, with only the Irish regime currently extending beyond this group of assets to also include unclaimed life assurance policies. However, within the next 12 months the UK Government is expected to bring forward legislative proposals which will potentially see its regime expanded to include dormant assets held in respect of insurance and pensions, investment and wealth management and securities².

It is the Treasury's intention to follow the position set by the UK and Jersey and for the Island's legislation to apply only to dormant bank accounts initially. Flexibility will however be provided in the Bill to allow its scope to be expanded to further groups of assets in the future if there is sufficient supportive evidence to justify this. The Isle of Man is well positioned to accommodate a broader dormancy regime akin to that which is expected to be adopted in the UK. Expanding the regime to include further asset classes can be achieved through secondary legislation³ which would avoid the need to amend or introduce further primary legislation (as would appear to be case if introducing new asset classes is considered appropriate in either the UK or Jersey).

¹ For the purpose of this Bill, banks are classified as the holders of class 1(1) and class 1(2) deposit taking licences in the Island.

² [Government Response to the Commission on Dormant Assets' Report on Tackling Dormant Assets: Recommendation to benefit investors and society](#)

³ The introduction of any new asset classes would be subject to Tynwald approval.

How has the Bill been developed?

The Treasury has worked closely with the other Crown Dependencies (CDs) in formulating this Bill to ensure that areas of commonality have been exploited and to provide consistency in the impact of the legislation on licensed banks where appropriate. Jersey have already enacted legislation and Guernsey are currently formulating policy in this area.

As it is proposed that dormant bank accounts will be the first asset class⁴ to be included in the Island's regime, the Treasury has engaged with IoM licensed banks during policy formulation. Consistency in the application of the law to dormant bank accounts is particularly important for banks that operate across all three CDs.

How will the dormant assets regime affect customers' rights?

The proposed dormant assets legislation will permit the transfer of dormant assets from a group of specified licenceholders to a central fund operated by the Treasury. The transfer of the asset to the fund will only occur where owners cannot be traced and subject to meeting the definition of dormancy (Part 1).

Appropriate steps are required to be taken by a licenceholder to try to reunite a customer with their dormant asset before it is subject to a transfer and to advise that customer of the consequences of the transfer on their financial interests.

Upon a dormant asset being transferred to the fund, the licenceholder's liability to the customer is extinguished, but the customer acquires a new right to reclaim their asset from the fund indefinitely regardless of what assets are available in the fund at any one point in time (Part 4).

Benefit to the Island's population

A proportion of the assets transferred to the fund will be retained in order to meet potential future repayment claims and a proportion will be released to a third party for distribution to good causes in the Island (subject to the requirement to retain sufficient liquidity in order to meet future liabilities in respect of repayment claims and operational costs)⁵.

⁴ An "asset class" describes a group of assets to which the law applies, for example, the first asset class will be bank accounts

⁵ In the UK, approximately 40% of all dormant assets collected by the central Fund have been made available for distribution. IoM distribution will, however, need to be assessed independently based on the overall value of the fund and the length of dormancy and size of individual amounts deposited.

The Bill enables the Treasury to separate the collection of the funds from their distribution by a third party distribution organisation. The appointed distribution organisation will have autonomy over how funds are spent subject to meeting agreed objectives and reporting annually on the use of funds to Tynwald (Part 5). The appointment of the distribution organisation will be subject to Tynwald approval.

Following enactment of the law, it may be up to five years before the first tranches of dormant bank accounts are transferred to the fund as banks will be provided with a transitional period of up to 5 years to review records, assess qualifying accounts and meet transfer arrangements required by the law. This is however a maximum time limit and banks may find they are able to transfer funds more quickly.

Consultation

The Bill is split into eight parts and the following consultation addresses each part in turn -

- Part 1:*** Provides the introduction and interpretation.
- Part 2:*** Establishes the Dormant Assets Fund.
- Part 3:*** Provides the mechanism for transferring dormant assets to the Fund.
- Part 4:*** Provides arrangements in relation to transferred assets and establishes the method for reclaim.
- Part 5:*** Deals with distribution of money from the Dormant Assets Fund for specified purposes.
- Part 6:*** Provides arrangements for when a licence holder is in default.
- Part 7:*** Provides transitional and special arrangements.
- Part 8:*** Contains miscellaneous articles of the Law, including powers to make regulations and orders.

Any comments or questions should be submitted in writing to:

Policy & Legislation Office,
The Treasury
1 Floor, Government Office,
Bucks Road, Douglas
IM1 3PU

Or by email to: Treasuryconsultations@gov.im

The closing date for the receipt of comments is **19 October 2018**.

Confidentiality

The information you send may be published in full or in a summary of responses.

When submitting your comments please indicate whether you are responding on behalf of an organisation (and if so which organisation) or on your own behalf.

Please let us know whether we can publish your comments in full (including your name or the name of the organisation you are representing), anonymously, or not at all (noting that if you select this option your response will only be part of a larger summary response document).

All information in responses, including personal information may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2105 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be agreed to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

All responses submitted will be held within the Isle of Man Government's consultation hub and will be treated in accordance with the [privacy policy](#).

Part 1: Introductory

Summary

Clauses 1 to 5 introduce the draft Bill and establish its scope. Clauses 6 to 8 deal with applicability of the law to certain asset classes held by banks in the Island. Clauses 9 and 10 provide for the amendment of the earlier clauses and provide the basis for the extension of the law to further asset classes.

Non-interference with existing safeguards

A key priority of the Treasury in developing the draft Bill has been to ensure that it does not interfere with measures in the Island that deal with our international obligations in respect of money laundering, terrorist financing and other related threats to the integrity of our financial system.

The approach to this issue has been two-fold. Firstly, clause 4(2) has the effect of prohibiting assets that are subject to any concerns relating to money laundering, terrorist financing, other related sanctions or any civil or criminal proceedings, from being classified as an asset for the purpose of the law (herein referred to as an "asset of concern"). The Treasury will not be party to any information about such assets which will not then be eligible for transfer to the fund.

Secondly, should an asset become an asset of concern subsequent to transfer to the fund, gateways have been built into the Bill to enable certain bodies, listed in clause 19(2), to execute their related duties in the same manner they would have done had the asset remained with the licenceholder.

Dormant Assets

Clause 6 identifies the licenceholders to which the law shall apply as being holders of class 1(1) and 1(2) deposit taking licences (noting that class 1(3) licence holders are not included in this definition as they do not take or hold deposits in the Isle of Man).

It is the Treasury's view that the dormant assets law should apply mandatorily to all relevant licenceholders in order to maximise the benefit to the Island. It is not, however, intended that compliance with the law should be a barrier to existing or new licenceholders operating in the Island and consequently powers exist in clause 6(3) for exemptions to inclusion to be applied (for example if it was not viable for a smaller licenceholder to develop its systems to comply with the requirements of the law). It is anticipated that all Island banks will be included in the dormancy regime at the outset.

The assets that will be included in the dormancy regime are defined in clause 3 as being accounts held by banks as part of their deposit taking activities. Dormancy for the purpose of the law is defined in clause 7 as 15 years of customer inactivity. These definitions replicate those provided in the Jersey Law and provide consistency for banks.

It is not proposed that precious metals and stones are included as an optional asset class in the Island's arrangements. The Treasury believes that the risks associated with realising the value of any such assets and the legal implications of restoring these should a repayment claim be made, outweighs any possible benefits.

It is recognised that in some cases banks may have acquired new business or may hold legacy systems that do not provide a sufficient record of customer activity to precisely identify the dormancy age of an account. In these circumstances, banks will be obliged to take a 'best endeavours' approach to identifying the last client initiated transaction on an account (as is required under clause 7(2)(b)(i)). In cases where the bank is unable to make an assessment of the last client initiated transaction on a given account, an application may be made under clause 8 to transfer the assets to the fund despite the dormancy categorisation not having been confirmed.

Extension of the law to new asset classes

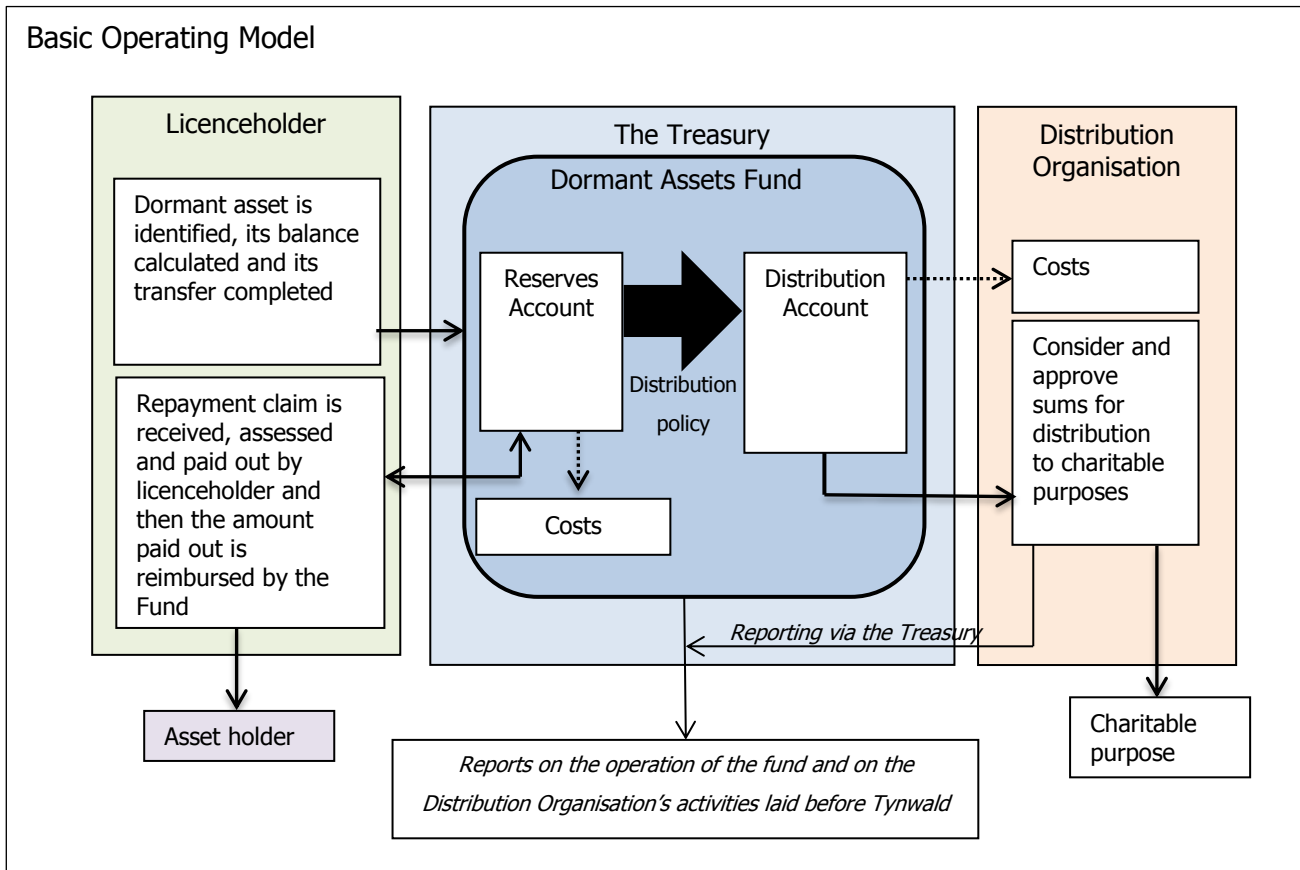
As noted previously, clause 10 enables the Treasury to extend the dormancy regime to new asset classes. This will only be done where sufficient evidence supports action and changes proposed will be subject to Tynwald approval.

1. Do you have any comments regarding Part 1 of the Bill?

Part 2: The Dormant Assets Fund

Summary

Part 2 of the draft Bill establishes the Dormant Assets Fund (the “fund”) and deals with its functions and operation. The basic operating model for the fund in accordance with clause 11 is depicted below.



Accountability and Transparency

It is proposed under clause 11(3) that the fund shall be under the control of the Treasury Minister. Retaining oversight within an existing structure (the Treasury) is considered suitable for smaller jurisdictions as it enables the management of the fund to be scaled up or down depending on the volume and value of dormant assets it holds. By subsequently delegating responsibilities (set out in clause 12) within existing Treasury Department structures⁶ costs can therefore be contained. However, the option is available to delegate responsibilities for operating the fund to other organisations should the workload become unviable.

⁶ Delegation would be authorised in accordance with section 3(2) of the Government Departments Act 1987.

To provide adequate governance, clause 14 provides that a comprehensive report on the fund's operation will be laid before Tynwald each year.

Interaction between the fund and general revenue

Clause 11(2) provides that the finances of the fund will be distinctly separate from general revenue receipts. However, should the value of a repayment claim exceed the current balance of the fund at any time, clauses 11(7) and 11(8) of the Bill permit the Treasury to call upon general revenue receipts to provide a loan to meet any short-term deficit. This provides a final option to ensure repayment claims can always be made promptly, but the Treasury will of course take all appropriate steps to ensure that the fund retains sufficient liquidity to repay any claims in all but exceptional circumstances.

Clause 13 ensures that any interest accrued by virtue of the investment of amounts held in the fund will become the property of the fund and that they shall not transfer into general revenue.

2. Do you have any comments regarding Part 2 of the Bill?

Part 3: Notices and Transfers

Summary

Part 3 of the Bill deals with the notification and transfer of dormant assets to the fund. The process is modelled on the equivalent process established under the Jersey Law to provide consistency. An illustration of the notice and transfer process that clauses 15 and 16 establish is provided at Appendix A.

Customer notification

The customer notification that a licenceholder must send in accordance with clause 15(2), seeks to reunite a dormant asset with its rightful owner prior to it being transferred to the fund.

The customer notification also advises the customer of the effect of the transfer on their property rights. This is particularly important because the rights of a customer whose dormant asset has transferred to the fund (a "transferred asset holder") will be different to the rights of a customer whose asset has remained with a licenceholder. This is explained in more detail under part 4 of this consultation.

Foreign currency assets

Clause 17 proposes that foreign currency assets will be converted to Sterling prior to their transfer to the fund and that any repayment claims will be made in the same denomination (under clause 19(5)).

Data protection / Data transferred to the fund

The information that will transfer from a licenceholder to the Treasury under clauses 15 and 16 will exclude personal information about the customer. Transferred assets will instead be assigned a unique account identifier by the licenceholder and the nature of that unique identifier will not be shared with the Treasury. The Treasury only requires information about the balance of a dormant asset, its currency and its dormancy age to fulfil its obligations under the legislation, at the notice and transfer stage.

3. Do you have any comments regarding Part 3 of the Bill?

Part 4: Repayment Claims

Summary

Part 4 of the Bill deals with the rights of customers in respect of their transferred asset and the repayment claim process.

Rights of asset holders

Clause 18(1) establishes the right of a customer to reclaim their transferred asset from the fund in perpetuity. The creation of this right should be read in conjunction with clause 26 which provides that even in circumstances where a licenceholder's liability to the customer would otherwise have been reduced or extinguished, the customer's right to reclaim their transferred asset is not effected. The establishment of this right to reclaim is consistent with arrangements in place under UK, Irish and Jersey law and provides a fundamental balance to the property interference that dormant assets regimes establish.

Clause 18(3) deals with interest. A transferred asset will not accrue interest except to the extent that is prescribed by the Treasury. This is purely an enabling power at this time as in practice applying interest would be extremely difficult and time consuming to administer.

A transferred asset will not be subject to the deduction of any costs upon a repayment claim being made. Clause 23 provides that a licenceholder may only deduct from the value of a dormant asset reasonable fees and expenses incurred in carrying out its obligations under the law before the transfer is made (and as provided for in the terms and conditions of the originating product).

Duties of licenceholders

Licenceholders will be responsible for managing the relationship with transferred asset holders including any legal and regulatory obligations.

In accordance with clause 22, licenceholders will act as agents of the Treasury in respect of repayment claims with the terms of that arrangement set out in the "Agent Agreement" found in the Schedule to the Bill.

It is beneficial for licenceholders to act in the capacity established under clause 19 and 22 as it is they who have the necessary systems and expertise to deal with reclaim requests. It also

simplifies the repayment claim process for customers who will reclaim their dormant asset from the organisation that originally held it.

Repayment claims

Clause 19(1)(f) and clause 21 establish the basic process for repayment claims.

There may be circumstances when a body acting on their behalf in accordance with clause 29 is unable to make repayment of a transferred asset directly to a customer (for example, if the amount owed to the customer was particularly high). Clause 19(3) therefore provides some additional flexibility to the repayment sequence.

Where a licenceholder submits a reclaim certificate to the Treasury for reimbursement of an amount paid out in respect of a repayment claim, it will be reconciled by the Treasury via a unique account identifier. Personal information about the asset holder will not transfer from the licenceholder to the Treasury as part of this reimbursement process.

4. Do you have any comments regarding Part 4 of the Bill?

PART 5: Distribution

Part 5 of the draft Bill deals with the distribution of transferred assets from the fund to charitable purposes in the Island.

The Distribution policy

Clause 24 proposes that the Treasury will be responsible for setting distribution policies. These policies will determine the value of assets held in the fund that can be made available for distribution to recipient causes in the Island and will be reported in the annual report of the fund to Tynwald.

It is the Treasury's view that distribution policies should be concluded based solely on a risk-based financial assessment of the dormant assets held within the fund at a given time. This is a similar approach to that adopted in the UK where the central reclaim fund, "Reclaim Fund Limited" is charged with responsibility for determining the amount of money that can be made available for distribution. The criteria that form the basis of the distribution policies will evolve over time as the Treasury can draw upon historical data regarding the amounts and frequency of repayment claims. Distribution must however, be based on the underlying principal that sufficient money remains in the fund to enable all reclaims to be made without recourse to additional sources in all but exceptional unforeseen circumstances.

The Distribution Organisation

In accordance with clause 25(3), it is proposed that an organisation shall be appointed by the Treasury (subject to the approval of Tynwald), to distribute dormant asset proceeds for charitable purposes in the Island.

Appointing a non-government body to the role of distribution organisation minimises the risk of any perception of bias or interference in the distribution decisions. However, recognising that options here may be limited, clause 25(3) would permit a body internal to Government to be appointed to the role as a last resort.

A distribution organisation may not be formally appointed to the role until the Treasury is in a position to release funds for distribution. This will be dependent on how quickly banks are able to review and forward information once the Bill is enacted (Part 7). The Treasury will, however, now explore all available options to ensure that appropriate arrangements are in place at the same time

as any funds can be released. Whatever distribution arrangements are applied, a report of the activities is required to be laid before Tynwald annually.

Charitable purposes

Clause 25(7) defines the purposes to which dormant asset proceeds may be distributed as follows:

- (a) the advancement of the arts in the Island;
- (b) the advancement of the heritage of the Island;
- (c) the advancement of health or education in the Island;
- (d) the advancement of environmental protection or improvement in the Island; or
- (e) any other charitable purposes carried on by a registered charity in the Island.

The list of charitable purposes is intentionally broad to allow a wide distribution of any available funds. In the normal course of events, the appointed distribution organisation will make independent decisions on how funds are utilised within the areas noted above.

However, further clauses also provide Tynwald with the power to specifically target distributions within the local community and to determine the proportion of distribution money that must be paid to each of the charitable purposes listed in clause 25(7). Tynwald may also permanently or temporarily amend the list of charitable purposes.

It is not anticipated that Tynwald would utilise these powers on a regular basis but they have been provided to allow the “ring-fencing” of funds for specific one-off charitable / community events or activities on an ad-hoc basis.

5. Do you have any comments regarding Part 5 of the Bill?

Part 6: Default of licenceholder

Part 6 of the Bill provides arrangements for situations when a licenceholder is to cease to hold their licence in the Island and allows for the continued management of transferred assets in such circumstances. Specifically, arrangements for the making of repayment claims must continue to be provided for despite a licenceholder ceasing to operate in the Island.

Under clause 28 the Treasury is permitted to assume any or all of a licenceholder's responsibilities. This power would only be exercised when a licenceholder is failing or is unable to perform its functions under clause 19(1), or when the duration of a successor's appointment has expired.

If the Treasury is called upon to act any associated administrative costs incurred may be drawn from the fund to ensure general revenue receipts do not have to be called upon.

Operation of repayment claims in cases of default by licenceholder

If a licenceholder does go into default, they will be required to ensure that an appointed person is in place for a period of 6 years after their licence ceases to fulfil their responsibilities under Part 4 of the Bill.

The 6 year period is determined by the time limit for the taking of actions founded on simple contracts in the Island (as determined by section 5 the [Limitation Act 1984](#)). It is important that the Treasury is protected from involvement in a legal dispute of contract between a transferred asset holder and a licenceholder. The basis for the 6 year time period follows the rationale underpinning the equivalent period in the Jersey law.

Regulations in cases of default by scheme member

The Treasury may also make additional arrangements for situations when a licenceholder defaults. This is purely an enabling provision to allow changes through secondary legislation if any unforeseen circumstances arise. Any changes here would be subject to Tynwald approval.

6. Do you have any comments regarding Part 6 of the Bill?

Part 7: Transitional arrangements and assets dormant at commencement

Part 7 provides arrangements to facilitate the implementation of the law.

Transitional arrangements

Licenceholders who do not already have in place sufficient identification and classification systems are permitted a five year transitional period to update their systems in order that they can fully comply with the legislation. This period will commence from the point in time that the law is enacted, or for new licenceholders in the Island, from the point in time their licence commences. Where possible, transitional arrangements mirror those provided for under Jersey Law to provide continuity for banks that have branches across various jurisdictions.

Assets dormant at commencement

Clauses 32 to 35 provide arrangements for the transfer of assets which became dormant prior to the first relevant year that applies to a given licenceholder. Essentially, these arrangements deal with the transfer of the stockpile of 'historic' dormant accounts that a bank will hold upon the commencement of the law. They form a distinctly separate group of dormant bank accounts to those which will transfer to the fund as part of the normal Notice and Transfer process provided for in Part 3 of the Bill.

In general, assets dormant at commencement will be transferred to the fund within 12 months of the law applying to a licenceholder, noting that where a licenceholder is utilising the transitional arrangements, the 12 month period will commence from the point in time that the transitional period ends.

7. Do you have any comments regarding Part 7 of the Bill?

Part 8: Miscellaneous

Part 8 of the Bill contains miscellaneous articles of the Law, including powers to make regulations and orders.

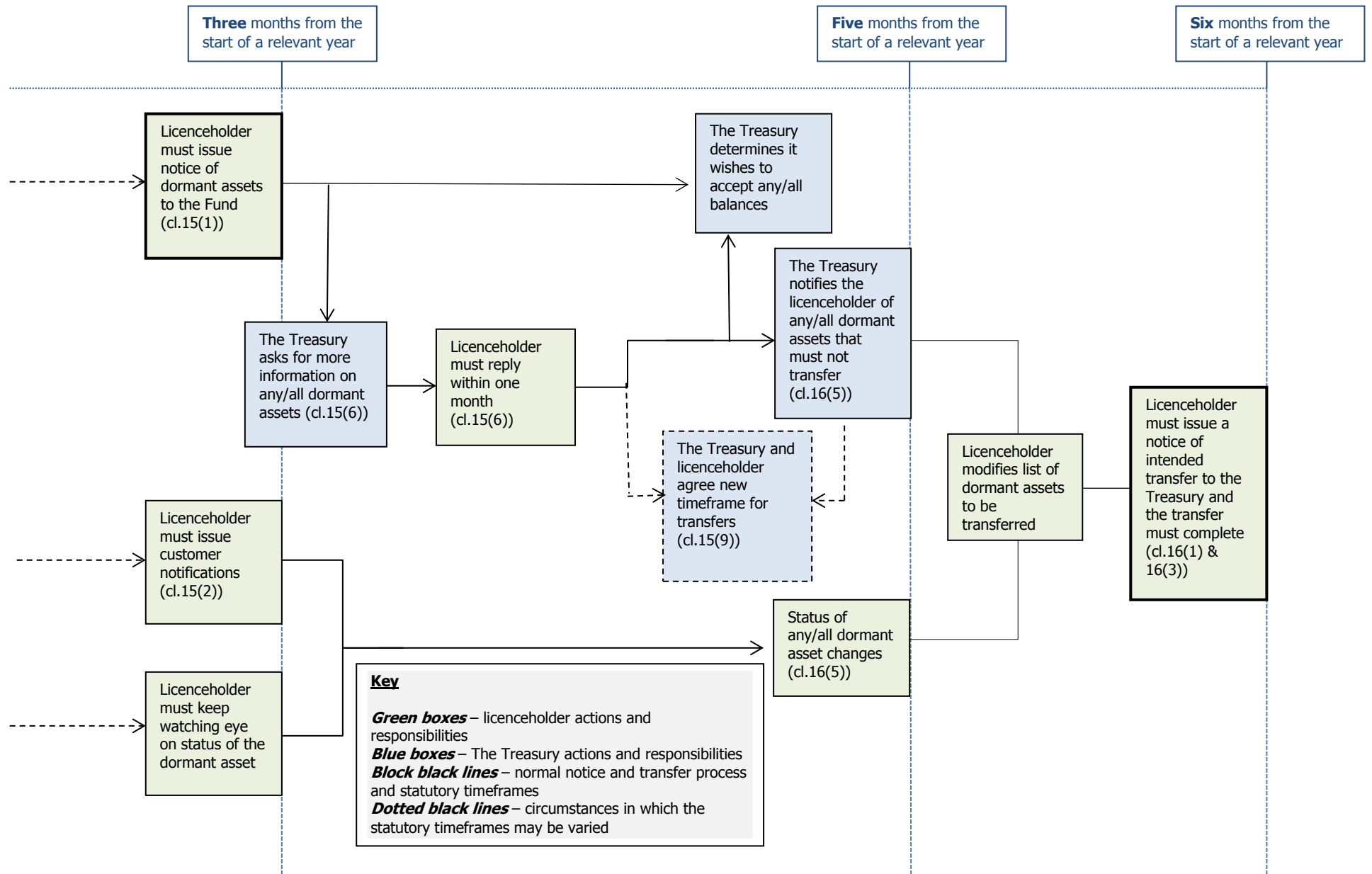
Provisions are included to allow for the adequate disclosure of information in order that the Treasury can access and audit data regarding the repayment claim process and also to ensure legal authority exists for the Department to act on behalf of a licenceholder in default.

It is also proposed that offences commitment under the law (such as non-compliance) will be subject to a maximum penalty of a level 4 fine on the Standard Scale (£5,000)⁷. This proposed level of fine is equal to that adopted under the Jersey Law.

8. Do you have any comments regarding Part 8 of the Bill?

⁷ Section 55 of the [Interpretation Act 2015](#)

Basic Notice and Transfer process





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This document can be provided in large print or audio tape on request

The Treasury
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