



THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

(LAW COM. No. 41)
(SCOT. LAW COM. No. 20)

NATIONAL SAVINGS BANK BILL

REPORT ON THE CONSOLIDATION OF ENACTMENTS
RELATING TO THE NATIONAL SAVINGS BANK

*Presented to Parliament by the Lord High Chancellor,
the Secretary of State for Scotland and the Lord Advocate
by Command of Her Majesty
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LAW COMMISSION

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*To the Right Honourable the Lord Hailsham of Saint Marylebone, Lord High
Chancellor of Great Britain,*

*the Right Honourable Gordon Campbell, M.C., M.P., Her Majesty's
Secretary of State for Scotland, and*

*the Right Honourable Norman Wylie, V.R.D., Q.C., M.P., Her Majesty's
Advocate.*

The National Savings Bank Bill which is the subject of this Report seeks to consolidate certain enactments relating to the National Savings Bank. In order to produce a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

The statutory provisions relating to the National Savings Bank are in many respects similar to the enactments relating to trustee savings banks, which were consolidated in the Trustee Savings Banks Act 1969. That Act incorporated amendments to give effect to recommendations made by us, and all but two of the recommendations made in connection with the present Bill correspond to recommendations made in connection with the Bill for that Act. The exceptions are the recommendations contained in paragraphs 7 and 8 of the Appendix.

In our view, only one of the amendments recommended by us could not have been made under the Consolidation of Enactments (Procedure) Act 1949. The amendment in question is that proposed in paragraph 2 of the Appendix.

The Treasury, the National Debt Office and the Department for National Savings have been consulted and agree with our recommendations.

LESLIE SCARMAN,
Chairman of the Law Commission.

C. J. D. SHAW,
Chairman of the Scottish Law Commission.

17 December 1970.

APPENDIX

RECOMMENDATIONS

1. Section 7(1)(b) of the Post Office Savings Bank Act 1954, as amended by the Post Office Act 1969, enables the Treasury to make regulations dealing with the payment or transfer of sums in the National Savings Bank which belong to persons appearing to be "of unsound mind". The terminology of section 7(1)(b) is out of date and does not accord with the regulations in the Post Office Savings Bank Regulations 1966 (S.I. 1966/727) which provide for this matter. Those regulations take account of the legislation with respect to mental disorder now in force and of the fact that that legislation is different for each part of the United Kingdom and for the Channel Islands and the Isle of Man.

We recommend that the words in section 7(1)(b) "of unsound mind" should be replaced by words which are up-to-date and which would enable the regulations to operate throughout the whole area of operation of the 1954 Act. Effect is given to this recommendation in clause 8(1)(f) of the Bill.

2. By virtue of section 7(2) of the 1954 Act (as amended by the Administration of Estates (Small Payments) Act 1965 and the Post Office Act 1969), probate or other proof of the title of the personal representative of a deceased person may, if regulations so provide, be dispensed with where the sum in the National Savings Bank which forms part of the estate does not exceed £500. Section 7(2) provides that that sum may be paid or distributed to or among the persons appearing in manner provided by the regulations to be beneficially entitled to the personal estate of the deceased, the various ways in which a person may be so entitled being listed, "or in case of any illegitimacy of the deceased person or his children, to or among such person or persons as may be directed by the said regulations".

The relevant regulation of the Post Office Savings Bank Regulations 1966 (regulation 37) makes no special provision for the case where the deceased person or any of his children was or is illegitimate, and, in view of the changes in the law relating to succession in cases of illegitimacy made by Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 and Part II of the Family Law Reform Act 1969, it is virtually certain that the power to make such special provision would never be used.

Even if the power were exercised, it is probable that regulations made under it would be ineffective. The regulations would give the Bank a good discharge where a payment is made in accordance with the regulations; but they could not alter the law as to succession. If, therefore, the regulations provided for payment to persons who would not be entitled to the property under the ordinary law of succession, the persons who were so entitled might have a right to claim from the payees.

We accordingly recommend that in re-enacting section 7(2) so much of the subsection as relates to illegitimacy should be omitted. Effect is given to this recommendation in clause 9(1) of the Bill.

3. Section 8(1) of the Post Office Savings Bank Act 1954, as amended by the Post Office Act 1969, provides for the determination by the Registrar of Friendly Societies of disputes between the Director of Savings and an "individual depositor", a person who is or claims to be the personal representative, next of kin or creditor of a depositor, the trustee in bankruptcy or assignee of a depositor, or a person who claims to be entitled to money deposited in the Bank.

Paragraph 4(1) of Schedule 4 to the Trustee Investments Act 1961 provides that section 8(1) of the 1954 Act shall apply to any depositor being a body of trustees as it applies to an individual depositor. This provision suggests that "individual depositor" in section 8(1)(a) means a single depositor, the word "individual" having been included to indicate a contrary intention within section 1 of the Interpretation Act 1889 (which provides that unless a contrary intention appears words in the singular in an Act passed after 1850 shall include the plural). If section 8(1)(a) is so construed, a dispute between the Director of Savings and depositors who have made a deposit in their joint names is outside the section unless the depositors are a body of trustees. The exclusion of these disputes constitutes an anomaly which is not of substantial importance but is undesirable.

We recommend that the anomaly be removed. Effect is given to this recommendation in clause 10(1) of the Bill.

4. Section 8(5) of the 1954 Act (as amended by the Post Office Act 1969) is as follows:—

“(5) The powers and duties of the Registrar under this section, except so far as relates to disputes between the Director of Savings and a depositor or a person claiming through or under a depositor, may be transferred to and vested in such persons as the Treasury may by statutory instrument appoint.”

The explanation for this is historical. Under section 14 of the Savings Banks Act 1844, as applied to the post office savings bank by section 14 of the Post Office Savings Bank Act 1861, disputes were referred to the barrister appointed under the Savings Bank Acts of 1828 and 1833 to certify the rules of savings banks. Under section 2(1) of the Savings Banks (Barrister) Act 1876 various functions of the barrister so appointed, including the powers and duties relating to any dispute between the Postmaster General and “any depositor or person claiming through or under a depositor” were transferred to and vested in the Registrar of Friendly Societies. Section 2(2) of that Act provided that all the powers and duties of the barrister which were not transferred under section 2(1) should be transferred to such persons as the Treasury from time to time appointed.

Many years later it was decided that the transfer effected by section 2(1) of the 1876 Act had been incomplete. Early in 1924 the Treasury exercised its power under section 2(2) and made an order (1924/1502; SR & O Rev. Vol. XX p. 583) which transferred to the Registrar such powers and duties (if any) as were not so transferred by section 2(1) of the 1876 Act relating to any dispute between the Postmaster General and the various persons mentioned in section 14 of the Savings Banks Act 1844.

After the making of the 1924 Order all the powers and duties relating to disputes between the Postmaster General and the persons mentioned in section 14 of the 1844 Act were undoubtedly vested in the Registrar. It was, however, arguable that the Treasury could still exercise its power under section 2(2) of the 1876 Act and transfer to other persons any powers and duties of the Registrar relating to disputes other than disputes between the Postmaster General and a depositor or a person claiming through or under a depositor. That power has never been exercised and is never likely to be exercised; but it was thought necessary to preserve it in the 1954 Act, which was a pure consolidation Act, and section 8(5) preserves it.

We recommend that section 8(5) should not be reproduced in the Bill but should be repealed by it.

5. Section 14(2) of the 1954 Act provides that no person who is a member of a charitable institution, friendly society or penny savings bank shall, by reason of being a depositor in the National Savings Bank, be considered as subject to any penalty, forfeiture or disability under the rules of the institution, society or penny savings bank.

The origin of this subsection was section 30 of the Savings Bank Act 1828. In so far as the subsection applies to members of a charitable institution it was probably aimed at the old type of charity for the poor where the beneficiary class had to be members of the charity. To demonstrate that they were “deserving”, and in order to qualify for benefit in time of need, members were required to contribute a small periodical sum to the funds of the charity. Money in the bank would have been a bar to membership under the rules of some of these charities. The position with regard to friendly societies when those societies were in their infancy may have been similar. The subsection also purports to protect the members of penny savings banks. If the “members” of such a bank are the depositors it seems clear that, whatever the position may have been a hundred years ago, the members may nowadays be depositors in a savings bank. This appears from section 25 of the 1954 Act which defines “penny savings bank” as a bank the rules of which fix a sum not exceeding £5 as the maximum amount which may stand to the credit of any one depositor at any one time, and which provide, upon the attainment of that maximum amount,

for its transfer to an account opened in the depositor's own name in the savings bank where the deposit account of the penny savings bank is kept. That definition originated in the Savings Banks Act 1904.

It therefore appears that section 14(2) of the 1954 Act is obsolete. We recommend that it should not be reproduced in the Bill but should be repealed by it.

6. Subsection (4) of section 14 of the 1954 Act (as amended by the Post Office Act 1969) declares that nothing in the section is to be construed as imposing any obligation on the National Savings Bank to receive funds. Subsection (4) relates to subsection (1), which gives to the treasurers of certain institutions power to invest in the Bank.

Section 14(4) is derived from section 19(5)(a) of the Industrial Assurance and Friendly Societies Act 1948, but despite its relatively recent origin it appears to be unnecessary. No comparable provision was made when the Trustee Investments Act 1961 empowered trustees to invest trust funds in savings banks.

We accordingly recommend that section 14(4) should not be re-enacted in the Bill but should be repealed by it.

7. Section 95(1) of the Post Office Act 1969 substitutes a new section for section 16 of the Post Office Savings Bank Act 1954. It provides for the way in which ordinary deposits are to be applied, and in particular requires the deduction from ordinary deposits of amounts equal to the expenses incurred by the Director of Savings and the National Debt Commissioners in the execution of the 1954 Act. Sections 98 and 99 of the 1969 Act deal respectively with annual statements with respect to ordinary deposits and with the annual adjustment of balances relating to those deposits, and each of those sections reflects section 95(1) by referring to expenses incurred in the execution of the 1954 Act.

In order to appreciate the effect of the references to expenses, it is necessary to consider the relationship of the 1954 Act and the Post Office Savings Bank Act 1966.

When the 1954 Act was passed, only one kind of deposit could be made in the post office savings bank and accordingly all expenses incurred in the execution of that Act by the Postmaster General or the National Debt Commissioners were incurred in connection with those deposits. Provision for deposits of another kind—investment deposits—was made by the 1966 Act. That Act did not set up an entirely new code for investment deposits; instead it provided for all deposits to be received under the 1954 Act, and then set out the special rules for investment deposits. This approach meant that, in the absence of any provision to the contrary, the whole of the 1954 Act would apply in relation to investment deposits; accordingly section 1(3) of the 1966 Act provided that certain sections of the 1954 Act should not so apply.

Among the sections excluded in relation to investment deposits were three (sections 16, 18 and 19) which referred to "expenses incurred in the execution of this Act". Those sections provided for the way in which ordinary deposits were to be applied and for the preparation and balancing of income accounts.

Separate provision for the application of investment deposits and for accounts relating to them was made by section 3 of the 1966 Act, and subsection (3) of that section provided for expenses incurred in connection with investment deposits to be paid out of those deposits. Apart from the three excluded sections, only two sections of the 1954 Act contained references to expenses incurred in the execution of the Act. These were sections 22 and 23, and section 7(3) of the 1966 Act provided that the expenses referred to in those sections should be separately calculated for the purposes of section 16 of the 1954 Act and for the purposes of section 3 of the 1966 Act.

The 1966 Act therefore ensured that the sections of the 1954 Act which referred to expenses incurred in the execution of the Act either had no application in relation to investment deposits, or were modified so as to secure the apportionment of expenses between the two kinds of deposit. Thus it was clear that the references in sections 16, 18 and 19 of the 1954 Act to expenses incurred in the execution of that Act were references to expenses incurred in connection with ordinary deposits.

Then comes the Post Office Act 1969. The new section 16 inserted in the 1954 Act by section 95(1) of the 1969 Act follows the old section 16 by referring to expenses incurred in the execution of the 1954 Act; but section 1(3)(c) of the 1966 Act, which provided that section 16 should not apply in relation to investment deposits, is repealed (1969 section 141 and Schedule 11 Part II). The apparent result is that all expenses, and not only those incurred in connection with ordinary deposits, are to be paid out of ordinary deposits. The same problem arises on sections 98 and 99 of the 1969 Act (which supersede sections 18 and 19 of the 1954 Act); both sections purport to deal only with ordinary deposits, but each of them refers to expenses incurred in the execution of the 1954 Act instead of referring only to expenses incurred in connection with ordinary deposits. This is in contrast with the new provisions relating to investment deposits where, as in the 1966 Act, the references are to expenses incurred in connection with investment deposits.

The result is that, on a literal construction of the 1969 Act, all expenses, whether incurred in connection with ordinary deposits or investment deposits, are payable out of ordinary deposits; and in addition expenses incurred in connection with investment deposits are payable out of investment deposits.

This duplication, which arises from treating the 1954 Act as if it dealt only with ordinary deposits, cannot have been intended and does not accord with the practice.

We recommend that in re-enacting sections 95, 98 and 99 of the Post Office Act 1969, the provisions relating to expenses should be restricted to expenses incurred in connection with ordinary deposits. Effect is given to this recommendation in clauses 17, 19 and 20 of the Bill.

8. By section 25 of the Post Office Savings Bank Act 1954 the expression "the Registrar" has in that Act the meaning assigned to it by section 106 of the Friendly Societies Act 1896; section 106 provides that that expression "shall mean for England the central office, and for Scotland or Ireland the assistant registrar for Scotland or Ireland". Sections 103 and 104 of the 1896 Act provide for that Act to apply to the Isle of Man and the Channel Islands as if they were part of England. The reference in section 106 to England therefore includes a reference to the Islands and, in relation to the Islands, "the Registrar" means the central office.

The position with regard to Northern Ireland is more complicated, as there has not been an assistant registrar for Ireland since a separate registry of friendly societies was set up after the passing of the Government of Ireland Act 1920. At that time, the Act which gave the Registrar his functions in relation to the post office savings bank was the Savings Banks (Barrister) Act 1876. That Act provided for the transfer to "the Registrar" of jurisdiction relating to disputes in connection with deposits. It defined "the Registrar" by reference to the Friendly Societies Act 1875, which contained a definition having the same effect as the definition later used in section 106 of the Friendly Societies Act 1896. Accordingly, when the Government of Ireland Act was passed the person responsible for settling disputes in Northern Ireland was the assistant registrar for Ireland.

In 1922, the Government of Ireland (Companies, Societies, &c.) Order 1922 (1922/184; SR & O Rev. Vol. XVI p. 1005) was made under section 69 of the Government of Ireland Act 1920. By that Order provision was made for a separate registrar of friendly societies in Northern Ireland; and Article 23 was as follows—

"Where under any enactment relating to matters with respect to which the Parliament of Northern Ireland has not power to make laws anything is required or authorised to be done by the assistant registrar of friendly societies for Ireland, the duty or power shall in Northern Ireland be performed by the chief registrar of friendly societies, or a deputy appointed by him".

The post office savings bank was, by virtue of sections 4 and 9 of the Government of Ireland Act, a matter with respect to which the Parliament of Northern Ireland had no power to make laws. After the 1922 Order, therefore, the person responsible for settling disputes in Northern Ireland was the chief registrar or his deputy.

The 1922 Order is not reflected in the Post Office Savings Bank Act 1954. That Act follows its predecessor the Savings Banks (Barrister) Act 1876 by applying the definition in the friendly societies code; but as the 1954 Act was passed later than the making of the 1922 Order, the Order could not operate upon it. The result is that the 1954 Act appears to provide for disputes in Northern Ireland to be settled by the non-existent assistant registrar for Ireland, although in practice disputes have continued to be settled by a deputy appointed by the chief registrar.

We recommend that the position contemplated by the 1922 Order should be restored. Effect is given to this recommendation in clause 27 of the Bill.