These notes refer to the Saving Gateway Accounts Bill
as brought from the House of Commons on 26th February 2009 [HL Bill 25]

SAVING GATEWAY ACCOUNTS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Saving Gateway Accounts Bill as brought from the House of Commons on 26th February 2009. They have been prepared by HM Treasury in order to assist the reader of the Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. In the 2008 Budget, the Government announced that the Saving Gateway, a cash saving scheme for working age people on lower incomes, would be introduced nationally.

4. The Government has conducted two formal consultations on proposals for the Saving Gateway. *Saving and Assets for All*[1] published in April 2001, and *Delivering Saving and Assets*[2], published in November 2001, sought views on the principles of the Saving Gateway.

5. The Saving Gateway was piloted twice between 2002 and 2007 and evaluations of the two Saving Gateway pilots have been published.[3] The Government also published *The Saving Gateway: operating a national scheme*[4] in March 2008, which set out more detailed proposals for introducing the Saving Gateway. All of these papers are available on the HM Treasury website.[5]

6. The policy intention of the Saving Gateway is to:

- promote a saving habit among working age people on lower incomes by providing an incentive to save through a government contribution for each pound saved; and
- promote financial inclusion by encouraging people to engage with mainstream financial services.

7. Eligibility for Saving Gateway accounts will be "passported" from certain benefits and tax credits. Eligible people will be able to open accounts with financial institutions that have been approved to provide Saving Gateway accounts by Her Majesty's Revenue and Customs (HMRC). Saving Gateway accounts will be of a fixed duration. At the end of the account's duration the Government will make a contribution for each pound saved.

8. This legislation sets out qualifying conditions for eligibility for the Saving Gateway. It imposes a duty on HMRC to issue notices to those who are eligible and a duty to reimburse account providers for the payment of the government contribution, or "maturity payment", to

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[1] *The Modernisation of Britain's Tax and Benefit System, Number 8* (HM Treasury, 2001)

[2] *The Modernisation of Britain's Tax and Benefit System, Number 9* (HM Treasury, 2001)

[3] *Incentives to save: Encouraging saving among low-income households*, Kempson, McKay, Collard (Personal Finance Research Centre, University of Bristol, March 2005); *Final Evaluation of the Saving Gateway 2 Pilot*, Harvey, Pettigrew, Madden, Emmerson, Tetlow, Wakefield (Ipsos MORI and Institute for Fiscal Studies, May 2007).

[4] *The Saving Gateway: operating a national scheme* (HM Treasury and HM Revenue and Customs, 2008).

[5] www.hm-treasury.gov.uk

account holders. Details of the requirements for providers and of the operation of accounts will be set out in regulations. The Bill contains additional provisions covering such matters as tax relief, the use of information, penalties and arrangements for appeals against decisions taken by HMRC in relation to the administration of the scheme.

9. The Bill has 32 clauses.

COMMENTARY

Clause 1 Saving Gateway Accounts

10. This clause defines what is meant by a "Saving Gateway account" for the purposes of the Act.

11. *Subsection (1)* sets out the four characteristics of a Saving Gateway account:

- that it is held by a person who has received a notice of eligibility and who was eligible at the relevant date (which is defined in *subsection (3)*). Notices of eligibility will be issued by HMRC under the powers given in clause 2;

- that the account satisfies the requirements imposed by or under the Bill;

- that the account has been properly opened; and

- that the account has not ceased to be a Saving Gateway account. The circumstances in which an account ceases to be a Saving Gateway account will be set out in regulations made under clause 10.

12. *Subsection (2)* states that Saving Gateway accounts will be under the management of the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners"). The conferring of a managerial discretion on the Commissioners is a standard feature of HMRC legislation, and that of its predecessor departments – the Inland Revenue and HM Customs and Excise.

13. In older fiscal legislation, the managerial discretion conferred on HMRC's predecessor departments has been denoted by the term "care and management". This Bill uses the more modern term of "management". The use of the term "management" is not intended to introduce a concept different from that found in older legislation.

14. *Subsection (3)* defines the "relevant date" for the purposes of *subsection 1(a)*. The relevant date is either the date on which a notice of eligibility is issued, or, if a person has ceased to be eligible on that date, the Commissioners may determine that an earlier date is to be treated as the relevant date under *subsection (3)(b)*.

15. This is intended to cater for situations where a person's claim to one of the benefits or tax credits listed in clause 3(2) ends a short time before HMRC issues the notice of eligibility. HMRC will receive information on eligibility on a periodic basis from the Department for Work and Pensions (DWP) and the Department for Social Development (DSD). There may be instances in which a person's claim to benefits or tax credits ceases before HMRC receive that information from the DWP or the DSD or between receipt of the information and the issue of the notice of eligibility.

Clause 2 Notices of eligibility

16. *Subsection (1)* requires the Commissioners to issue a notice of eligibility to each person who is eligible for a Saving Gateway account. Eligibility is defined by clause 3, which is described below.

17. *Subsection (2)* provides that the notice must include an expiry date. It enables the Treasury to specify in regulations what other information is to be contained in the notice and the way in which the notice is to be issued.

18. *Subsection (3)* enables regulations to be made allowing the Commissioners to issue a further notice of eligibility to a person where the expiry date in any previous notice has passed.

Clause 3 Eligible persons

19. This clause sets out when a person will be an eligible person for the purposes of this Bill. Individuals who are entitled to certain benefits will automatically receive a notice of eligibility and will be eligible to apply to open a Saving Gateway account, as will individuals who are eligible for certain tax credits who satisfy conditions to be specified in regulations. Clause 3 sets out which benefits and tax credits will lead to eligibility and makes provision for further conditions relating to eligibility to be set out in regulations.

20. *Subsection (1*) specifies two criteria that a person must meet in order to be an eligible person. *Subsection (1)(a)* provides that a person must be entitled to one or more of the benefits or tax credits listed in *subsection (2)* in order to be an eligible person. *Subsection (1)(b)* provides that, to be eligible, a person must have a connection with the United Kingdom of a kind set out in regulations to be made under this clause.

21. *Subsection (2)* lists the benefits and tax credits which a person must be entitled to in order to be an eligible person. These are:

- income support;
- employment and support allowance;

- jobseeker's allowance;
- incapacity benefit;
- severe disablement allowance;
- child tax credit (subject to regulations made under *subsection (4)*); and
- working tax credit (subject to regulations made under *subsection (4)*).

22. For jobseeker’s allowance and employment and support allowance, both income-based and contribution-based entitlement will lead to eligibility for the Saving Gateway.

23. *Subsection (3)* provides that, where a joint claim is made to a benefit or tax credit by two eligible persons, such as may happen, for example, where a joint claim to child tax credit is made, both parties to the claim will be eligible for a Saving Gateway account.

24. *Subsections (4) and (5)* provide for regulations to be made limiting the circumstances in which a person entitled to child tax credit or working tax credit is eligible for a Saving Gateway account. Regulations made under this clause may include the imposition of an income threshold above which tax credit recipients are not eligible for Saving Gateway accounts, or provisions in relation to individuals whose entitlement to tax credits arises because they are also entitled to a prescribed social security benefit. Regulations made under *subsection (4)* may make provision similar to any provision of the Tax Credits Act 2002[6] or to any regulations made under that Act, with or without modifications. The Government is minded to impose an income threshold, above which tax credit recipients are not eligible for Saving Gateway accounts, and to align this with the child tax credit threshold, which is currently set at £15,575.

25. *Subsection (6)* enables the list of benefits and tax credits contained in *subsection (2)* to be amended by order.

26. *Subsection (7)* enables an order under *subsection (6)* to make consequential amendments to clause 3.

Clause 4 Requirements relating to accounts

27. Clause 4 contains requirements relating to accounts and gives the Treasury power to make regulations imposing requirements that an account must comply with to be a Saving Gateway account.

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[6] Tax Credits Act 2002 (2002 c.21)

28. *Subsection (1)* determines that providers of Saving Gateway accounts must be approved by the Commissioners in accordance with regulations. Saving Gateway accounts may be held only with an approved account provider.

29. *Subsection (2)* specifies conditions that an account must meet in order to be a Saving Gateway account. *Subsection (2)(a)* provides that an account is not a Saving Gateway account unless, under the terms of the account, the account holder is entitled to a "maturity payment" at the end of the account. The maturity payment is the government contribution paid at the end of the account and is calculated according to the rules contained in clause 8.

30. *Subsection (2)(b)* provides that an account is not a Saving Gateway account unless, under the terms of the account, the personal representatives of the account holder are entitled to a payment (a "death payment") in the event of the account holder dying before the end of the account. Regulations made under this clause will specify how the death payment is to be calculated and the period within which it is to be payable by the account provider.

31. *Subsection (2)(c)* provides that an account is not a Saving Gateway account unless it complies with any additional requirements imposed by regulations.

32. *Subsection (3)* enables the Treasury to make regulations imposing a limit on the amount which may be paid into a Saving Gateway account during a month. This limit does not apply to interest or other sums paid by the approved account provider under the terms of the account.

33. *Subsection (4)* defines "month" for the purposes of *subsection (3).* The effect of this subsection is to ensure that the deposit limit set under the regulation-making power in *subsection (3)* applies to a calendar month, apart from in the first month of the account's duration. The first month of the account duration runs from the day on which the account is opened to the end of the calendar month in which it is opened, and so may be less than a full calendar month.

Clause 5 Approvals

34. Clause 5 relates to the approval of account providers by HMRC. The approval process will be set out in regulations and will be based on the process for providers wishing to offer Child Trust Funds.

35. *Subsection (1)* provides that regulations made by the Treasury under clause 4(1) may include provisions enabling the Commissioners to impose conditions on an approved account provider, and that approval may be withdrawn.

36. *Subsection (2)* enables regulations to impose requirements on providers whose approval as an account provider has been or is to be withdrawn to provide prescribed information to prescribed account holders. The details of the process to be followed in such

circumstances will be set out in regulations but may, for example, include a requirement to supply to account holders notification of their right to transfer their account to another approved account provider.

Clause 6 Account opening

37. Clause 6 relates to the opening of accounts and gives the Treasury power to make regulations in relation to the opening and holding of accounts by eligible persons.

38. *Subsection (1)* states that a person who receives a notice of eligibility may apply to open a Saving Gateway account with an approved account provider.

39. The information to be contained in notices of eligibility will be set out in regulations made under clause 2 and, as specified in clause 2(2)(a), will contain an expiry date. *Subsection (2)* specifies that an application to open an account must be made, and accepted by the account provider, by the end of the expiry date specified in the notice. The application must also include a true declaration as prescribed in regulations and must be made in accordance with regulations. Where an incorrect declaration is made or an application for an account otherwise breaches the requirements of *subsection (2)*, the account opened will not be a Saving Gateway account as provided for in clause 1(1)(c). Where an incorrect declaration is made deliberately by a person seeking to open a Saving Gateway account, a penalty may be charged under clause 19(1), as described below.

40. Where an application is made that meets the requirements of this clause, the account provider is obliged to open a Saving Gateway account under *subsection (3)*.

41. *Subsection (4)* provides that exceptions to the obligation to open an account may be set out in regulations. These exceptions may, for example, include a situation where an account provider believes the notice of eligibility is not genuine or that the applicant has provided incorrect information as part of the application.

42. *Subsection (5)* allows the Treasury to make regulations in relation to holding and opening Saving Gateway accounts. Regulations may in particular prevent a person holding more than one Saving Gateway account at the same time, may specify a period after the end of a Saving Gateway account during which a person cannot open another Saving Gateway account and may prevent a person from opening more than a specified number of accounts in their lifetime, or from holding more than a specified number of Saving Gateway accounts until the end of their maturity periods.

Clause 7 Transfers

43. Clause 7 gives the Treasury power to make regulations regarding the transfer of accounts from one account provider to another. The detail of the account transfer procedure will be set out in regulations.

Clause 8 Maturity payments

44. Clause 8 specifies how the maturity payment payable at the end of the account's maturity period is to be calculated.

45. *Subsection (1)* contains the method for calculating the maturity payment. The maturity payment is the government contribution made at the end of a Saving Gateway account. The amount of the maturity payment is calculated by multiplying the number of whole pounds in the qualifying balance of an account at the end of the maturity period ("A") by an amount in pence to be specified in regulations ("B").

46. The Government has announced that the amount to be specified in regulations will be 50 pence, meaning that the government contribution will be calculated at the rate of 50p for every £1 in the qualifying balance of a Saving Gateway account.

47. *Subsection (2)* provides that the qualifying balance of a Saving Gateway account is the highest balance achieved during the maturity period.

48. *Subsection (3)* provides that two sums are to be disregarded when calculating the highest balance that has been achieved in a Saving Gateway account. *Subsection (3)(a)* specifies that interest or other sums credited to the account by the account provider under the terms of the account are to be disregarded. *Subsection (3)(b)* specifies that any amounts paid in breach of the limit on deposits specified in regulations under clause 4(3) are to be disregarded.

49. Worked examples are given below to illustrate how these rules operate in different cases. All figures are purely illustrative. The Government has announced that the limit to be specified in regulations under clause 4(3) on the amount that can be deposited in a month is £25 and that the maturity period to be specified in regulations under clause 4(2)(a) is two years.

50. Example 1. An account holder saves £25 per month over two years and makes no withdrawals. Interest of £2 is credited to the account at the end of month 12 and £3 at the end of month 24. This gives a closing balance on the account of £605, made up of 24 monthly payments of £25 and £5 of interest. The qualifying balance in this example would be £600, as the interest payments are disregarded under *subsection (3)(a)*. The maturity payment in this example would therefore be 600 x 50p = £300.

51. Example 2. An account holder deposits £10 a month in the first 11 months of the maturity period but makes a deposit of £50 in month 12, in breach of the limit on deposits in a month specified in regulations under clause 4(3). The account holder continues to deposit £10 a month in each of the remaining 12 months of the account. No withdrawals are made. £2 of interest is paid at the end of month 12 and £2 of interest is paid at the end of month 24.

52. The actual closing balance of the account would be £284, made up of 23 monthly deposits of £10, a deposit of £50 in month 12 and £4 of interest. In this case the qualifying balance would be £255, as the interest payments of £4 are disregarded under *subsection (3)(a)* and the sum of £25 paid in excess of the monthly limit in month 12 is disregarded under *subsection (3)(b),* meaning that only £25 of the £50 deposited in month 12 counts towards the qualifying balance. The maturity payment in this example would therefore be 255 x 50p = £127.50.

53. Example 3. A person saves £25 each month for the first 12 months of the account, giving an actual balance of £300. The person withdraws £100 in month 12 and makes no further withdrawals or deposits. The closing balance of the account would be £200 (assuming in this example that no interest is paid). The qualifying balance of the account is £300 as this is the highest balance achieved during the maturity period. The maturity payment in this example would be 300 x 50p = £150.

54. Example 4. A person saves £25 each month for the first 12 months of the account, giving an account balance of £300 and then withdraws £100 in month 12. The actual closing balance at the end of month 12 is £200. The account holder makes deposits of £25 in each of the remaining 12 months of the maturity period. An interest payment of £2 is credited to the account at the end of month 12 and at the end of month 24.

55. The closing balance on the account at the end of month 24 is £504, which comprises 24 monthly deposits of £25 (£600) less the £100 withdrawal made in month 12, plus £4 of interest. The qualifying balance in this example is £500, which is the highest balance achieved during the maturity period, of £504 at the end of month 24, less £4 interest which is disregarded under *subsection (3)(a)*. This example illustrates that where a withdrawal has been made, the account holder must make further deposits to catch up to the previous highest balance achieved before amounts saved count towards the qualifying balance. In this example the £25 deposits made in months 13 to 16 enable the account holder to catch up to the previous highest balance of £300. The maturity payment in this example would be 500 x 50p = £250.

56. *Subsection (4)* requires the maturity payment to be paid by the account provider to the account holder within a period of time, to be specified in regulations, after the end of the maturity period.

57. *Subsection (5)* provides that the account holder is not entitled to a maturity payment where an account is closed before the end of the maturity period.

Clause 9 Statements etc.

58. Clause 9 gives the Treasury the power to make regulations about the account statements to be issued by account providers.

59. *Subsection (1*) gives the Treasury the power to make regulations requiring account providers to send account statements to account holders. Regulations may specify the information that account statements are to contain and how often they are to be sent to account holders.

60. *Subsection (2)* disapplies section 234A of the Income and Corporation Taxes Act 1988[7], so that there is no duty under section 234A on account providers to supply information to account holders concerning the distribution of interest.

Clause 10 Account ceasing to be Saving Gateway account

61. Clause 10 gives the Treasury power to make regulations specifying when an account ceases to be a Saving Gateway account.

Clause 11 Returns of information to HMRC

62. This clause concerns the information to be provided by persons who are or were approved account providers to HMRC.

63. *Subsection (1)* provides that regulations may place a requirement on approved account providers, or persons who were approved account providers, to submit an information return to HMRC about Saving Gateway accounts or former Saving Gateway accounts.

64. *Subsection (2)* provides that the regulations may specify the information to be included in the return, the form of the return, the period to which a return relates and the period within which it is to be submitted. *Subsection (2)(e)* provides that regulations may set out how a return is to be submitted, which may include a requirement that returns are to be made by electronic means under the provisions of section 135 of the Finance Act 2002[8], with or without modifications.

65. Section 135 of Finance Act 2002 provides authority for the Commissioners to make regulations requiring electronic communications to be used by specified persons to deliver specified information relating to a taxation matter. The regulations in Part 10 of the Income Tax (Pay As You Earn) Regulations 2003[9] which make Pay As You Earn online filing and payment mandatory for large employers are, for example, made partly in exercise of the powers granted in section 135 of Finance Act 2002. As the powers conferred on the Commissioners by section 135 are limited to "taxation matters" they could not be used to make provision relating to Saving Gateway accounts. Clause 11(2)(e) therefore allows

[7] Income and Corporation Taxes Act 1988 (1988 c.1)

[8] Finance Act 2002 (2002 c.23)

[9] The Income Tax (Pay As You Earn) Regulations 2003, SI 2003/2682

regulations to be made applying the provisions made under section 135, with or without modifications, to Saving Gateway accounts.

66. Under the powers given by *subsection (3)* regulations may provide for the return to include a claim by the approved account provider for payment of an amount equal to maturity payments made to account holders and death payments made to the personal representatives of deceased account holders. Regulations made under this subsection will require account providers to submit a monthly claim to HMRC for payment of these amounts.

67. *Subsection (4)* provides that the Commissioners must pay any amount claimed in accordance with regulations made under *subsection 3(a)* within a period to be specified in regulations.

Clause 12 Recovery of payments by HMRC
68. This clause gives the Treasury power to make regulations in regard to the recovery of payments made by HMRC.

69. *Subsection (1)* gives the Treasury power to make regulations requiring persons of a description specified in the regulations to account to HMRC for any sums incorrectly paid by HMRC in relation to Saving Gateway accounts. Regulations made under this power will, for example, enable HMRC to recover any amounts that have been overpaid to an account provider in response to a claim made under clause 11(3)(a).

70. *Subsection (2)* enables regulations to be made treating such sums as tax charged in an assessment for the purposes of Part 6 of the Taxes Management Act 1970[10]. Such regulations would enable HMRC to collect these sums in the same way as sums of tax due to HMRC. Part 6 of the Taxes Management Act 1970 contains provisions relating to the collection and recovery of tax. Under these provisions, HMRC are able to issue formal demands for tax. Part 6 also makes provision for collection by distraint and for recovery of tax through Court proceedings where a person refuses to pay an amount charged.

71. *Subsection (3)* enables regulations to provide a time limit after which a person ceases to be required to account for an amount to HMRC.

Clause 13 Interest
72. This clause gives the Treasury power to make regulations in regard to the charging and paying of interest on amounts due to, and payable by, the Commissioners.

[10] Taxes Management Act 1970 (1970 c.9)

73. *Subsection (1)* enables regulations to be made providing for interest to be charged by HMRC, in prescribed circumstances, on any amount payable to the Commissioners under this Bill.

74. Regulations under *subsection (2)* may also provide for HMRC to pay interest where it makes a payment to an account provider for an amount claimed under clause 11(3)(a) later than the due date as set out in regulations.

75. *Subsection (3)* enables regulations to set the rate at which interest is to be paid, the way in which that rate is to be determined and the period in respect of which interest is to be paid. Regulations may also provide that interest payable to the Commissioners is to be treated for the purposes of Part 6 of the Taxes Management Act 1970[11] as tax due under an assessment, enabling HMRC to collect these sums in the same way as tax due to HMRC is collected (see paragraph 69 above).

Clause 14 Relief from income tax and capital gains tax

76. Clause 14 gives the Treasury powers to make regulations giving relief from income tax and capital gains tax in respect of Saving Gateway accounts.

77. *Subsection (1)* provides for regulations to be made giving relief from income tax and capital gains tax on any payment made by an account provider to or in relation to a Saving Gateway account.

78. Under *subsection (2)* regulations can be made modifying the effect of income tax or capital gains tax legislation in relation to Saving Gateway accounts.

79. *Subsection (3)* enables regulations to include provision for appropriate restitution to be made to HMRC in circumstances prescribed in the regulations. This will cover cases where tax relief was given where it was not due.

Clause 15 Alternative finance arrangements

80. Clause 15 allows a Saving Gateway account to be treated as an "alternative finance arrangement" for the purposes of Chapter 5 of Part 2 of the Finance Act 2005[12]. For a deposit arrangement to come within section 49 of Finance Act 2005, the payments made to the depositor must come "out of any profit resulting from the use of the [deposited] money" and must equate in substance to the return on an investment of money at interest (under sections 49(1) (c) and (d)).

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[11] Taxes Management Act 1970 (1970 c.9)

[12] Finance Act 2005 (2005 c. 7)

81. The payment of a maturity payment at the end of the Saving Gateway account, or a death payment following the death of the account holder, could be seen as breaching these conditions. This clause provides that a Saving Gateway account that would otherwise be treated, by virtue of section 49 or 49A of Finance Act 2005, as an alternative finance arrangement, but for the payment of a maturity payment or death payment, should not be disqualified because of it. It will give certainty that regulations made under clause 14 will apply to the tax treatment of an investment return paid on such an account as they do to interest. It will also give certainty of treatment in the provider's own corporation tax returns.

Clause 16 Transfer of funds on account ceasing to be Saving Gateway account

82. This clause enables the Treasury to make regulations permitting the transfer of funds from an account that has ceased to be a Saving Gateway account to an investment plan of a kind prescribed in regulations. The Government intends to make regulations permitting the transfer of funds from an account that has ceased to be a Saving Gateway account to an Individual Savings Account (ISA). Regulations under this clause will permit an account holder to request that his or her account provider issues a certificate specifying the prescribed information. The account holder must supply this certificate to the provider of the ISA to which they wish to transfer the funds.

83. The Government intends to amend the ISA Regulations 1998[13] to allow the transfer of the closing balance of a Saving Gateway account, and the associated maturity payment, to be transferred into an ISA as a transfer of previous year subscriptions and thus outside the normal annual subscription limits, where it is accompanied by a certificate issued under clause 16 and where the transfer is made within a specified time limit.

Clause 17 Information to be supplied by relevant persons

84. This clause gives the Treasury power to make regulations under which information can be required from relevant persons.

85. Under *subsection (1)* the regulations may require or authorise officers of HMRC to require a relevant person to provide documents for inspection or to provide information or documents to HMRC.

86. *Subsection (2)* defines a relevant person as a person who is or has been an approved account provider, a person who has applied to open a Saving Gateway account or a person who holds, or has held, a Saving Gateway account.

87. *Subsection (3)* provides that regulations may specify how, where and when information or documents should be provided.

[13] The Individual Savings Account Regulations 1998, SI 1998/1870

Clause 18 Disclosure of information

88. The information that is required to establish eligibility to the Saving Gateway will come from three sources. The DWP in England, Scotland and Wales and the DSD in Northern Ireland hold information relating to entitlement to qualifying benefits. HMRC will already hold information relating to qualifying tax credits.

89. Under section 17(1) of the Commissioners for Revenue and Customs Act 2005[14], any information acquired by HMRC in connection with a function may be used by HMRC in connection with any other of its functions. This will enable HMRC to use tax credit information for purposes relating to the Saving Gateway, as both tax credits and the Saving Gateway are or will be functions of HMRC.

90. Section 121F of the Social Security Administration Act 1992[15] permits information relating to qualifying benefits to be supplied by the Secretary of State and the DSD respectively to HMRC, but such information can only be used for certain specified purposes. The Social Security Administration (Northern Ireland) Act 1992[16] contains similar provisions that are applicable in Northern Ireland.

91. *Subsections (1)* and *(2)* amend the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992 respectively to enable information held by the DWP and the DSD to be supplied to HMRC for the purposes of the Saving Gateway.

Clause 19 Penalties: incorrect information

92. Clauses 19, 20 and 21 make provision in relation to penalties.

93. Clause 19 makes provision in relation to penalties that may be imposed where incorrect information is supplied to HMRC.

94. Under *subsection (1)* HMRC will have the power to impose a penalty of £300 on anyone who deliberately makes an incorrect declaration when applying to open a Saving Gateway account.

95. *Subsection (2)* permits HMRC to impose a penalty not exceeding £3,000 on a person who deliberately or carelessly makes an incorrect statement or declaration in or in connection with a return made in accordance with regulations made under clause 11 and on a person who

[14] Commissioners for Revenue and Customs Act 2005 (2005 c.11)

[15] Social Security Administration Act 1992 (1992 c.5)

[16] Social Security Administration (Northern Ireland) Act 1992 (1992 c.8)

deliberately or carelessly provides incorrect information in response to a requirement to provide such information in accordance with regulations made under clause 17.

96. *Subsection (3)* sets out that where a person provides information to HMRC, later discovers that the information provided was inaccurate and fails to take reasonable steps to inform HMRC, that person will be treated as having acted carelessly. A penalty may be imposed under *subsection (2)* in such circumstances.

Clause 20 Penalties: failure to submit return etc.

97. Under *subsection (1)* penalties may be imposed on account providers who fail to submit a return within the time set out in regulations made under clause 11 and on any person who does not provide a document or information within the time set out in regulations made under clause 17.

98. *Subsection (2)* sets this penalty at no more than £300 for the initial failure. In addition, daily penalties of not more than £60 may be imposed for each day that the failure continues after the first penalty is imposed.

99. *Subsection (3)* ensures that no penalty will be charged under *subsection (1)* once the failure has been remedied.

100. *Subsection (4)* ensures that a person will not be considered to have failed to make a timely claim or failed to provide or make information available on time if they have done so within any additional time offered by HMRC or if they had a reasonable excuse for the delay.

101. *Subsection (5)* lists matters which are and are not considered to be reasonable excuses for the purposes of *subsection (4)*.

Clause 21 Penalties: non-compliance by account provider

102. This clause sets out the penalties that may be imposed on a provider who fails to comply with requirements imposed by legislation. Under *subsection (1)* penalties can be imposed on account provider where:

> (a) the provider offers or operates an account which purports to be a Saving Gateway account but which does not comply with a requirement imposed by or under clause 4;
> (b) the provider fails to pay a maturity payment to an account holder within the period specified in regulations made under clause 8(4);
> (c) the provider fails to make a death payment to the personal representatives of a deceased account holder within the period specified in regulations made under clause 4(2)(b);
> (d) the provider allows the account holder to exceed the limit on payments into the account imposed by regulations under clause 4(3);

(e) the provider fails to comply with a condition imposed by or under regulations made under clause 5 (approval as an account provider);
(f) the provider opens a purported Saving Gateway account for a person where the application for the account does not contain the declaration to be made by the account holder under clause 6(2)(b) or does not comply with clause 6(2)(c);
(g) the provider fails to open an account for an account holder, in breach of the requirement to do so under clause 6(3);
(h) the provider opens an account for an account holder in breach of a requirement to refuse to open an account under regulations made under clause 6(4);
(i) the provider fails to comply with any other requirement imposed in regulations made under clause 7 (transfer of accounts) or clause 9 (statements).

103. *Subsection (2)* sets the penalty under *subsection (1)* as not exceeding the greater of £300 or £1 in respect of each Saving Gateway account affected by the matter, or any of the matters, in respect of which the penalty under *subsection (1)* is imposed.

104. *Subsection (3)* provides for a supplementary penalty to be imposed by HMRC where an earlier penalty imposed under *subsection (1)* was based on an underestimate of the number of accounts affected.

Clause 22 Decisions and notices

105. This clause sets out various procedural matters relating to penalties imposed under clause 19, 20 or 21.

106. *Subsection (1)* specifies that the decision to impose a penalty is that of the Commissioners.

107. *Subsection (2)* provides that the time limit within which a decision to impose a penalty can be made is 12 months beginning with the relevant date.

108. *Subsection (3)* defines what is meant by “the relevant date”.

109. *Subsection (4)* defines what is meant by “the appeal period” for the purposes of *subsection (3)(a)*, which relates to a decision by the Commissioners to impose a penalty under clause 19(1) on a person who deliberately makes an incorrect declaration under clause 6(2)(b).

110. *Subsection (5)* states that the Commissioners must give notice of their decision to impose a penalty to the person on whom the penalty is imposed.

111. *Subsection (6)* allows the Commissioners to use their discretion to reduce a penalty after the notice referred to in *subsection (5)* has been given.

112. *Subsection (7)* provides a 30-day time limit from the date on which the penalty notice was issued for the payment of any penalty.

113. *Subsection (8)* sets out what information must be included within the penalty notice namely the amount, the date of issue and details of the right of appeal.

114. *Subsection (9)* enables such penalties to be treated as tax charged in an assessment for the purposes of Part 6 of the Taxes Management Act 1970[17]. This will enable HMRC to collect these sums in the same way as sums of tax due to HMRC.

Clause 23 Rights of appeal

115. This clause provides the circumstances in which appeals can be made against certain decisions made, or certain actions taken, by HMRC.

116. *Subsection (1)* provides a right of appeal against a decision made by the Commissioners: not to approve a person as an account provider; to withdraw approval to provide Saving Gateway accounts; not to pay an amount claimed by an account provider under regulations made under clause 11(3); not to issue a notice of eligibility for a Saving Gateway account; and that an account is not a Saving Gateway account.

117. *Subsection (2)* provides that a person can appeal against a decision, made by the Commissioners under regulations made under clause 12(1), to require a person to account for any sums that have been paid by HMRC in relation to Saving Gateway accounts. This subsection also provides that a person can appeal against a decision, made by the Commissioners under regulations made under clause 14(3), to require a person to account for tax, or an amount in respect of tax, on a payment made by an account provider to, or in relation to, a Saving Gateway account.

118. *Subsection (3)* provides a right of appeal against the imposition by the Commissioners of any penalty under this Bill.

119. *Subsection (4)* provides a right of appeal against the amount charged by the Commissioners by way of a penalty under this Bill. This right of appeal applies to all penalties under this Bill, other than the penalty at clause 19(1), where this Bill fixes the amount to be charged at £300. While a tribunal may set aside or confirm the decision to impose a penalty under clause 19(1), it would not be open to a tribunal to reduce or increase the level of this penalty. A tribunal's powers in relation to appeals against the Commissioners' decision to impose a penalty are specified in clause 25(3), as described below.

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[17] Taxes Management Act 1970 (1970 c.9)

Clause 24 Exercise of rights of appeal

120. This clause sets out various procedural matters relating to the exercise of a right of appeal under clause 23.

121. *Subsection (1)* sets out the time limits within which an appeal should be notified to the Commissioners.

122. *Subsection (2)* specifies the content of a notice of appeal for tax appeals and Northern Ireland appeals (as defined in *subsection (3)*). All other appeals made under section 23 will be heard by the Social Entitlement Chamber of the First-tier Tribunal – see the notes on section 25 below for further details. The relevant Tribunal Procedure Rules on notices of appeal will apply to those appeals.

123. *Subsections (4)* and (5) enable the Treasury to make regulations applying administrative provisions of other enactments to appeals relating to Saving Gateway accounts. *Subsection (6)* enables the Treasury to alter the list of enactments in *subsection (5)* by Order.

Clause 25 Appeals: jurisdiction and powers

124. This clause sets out the jurisdiction and powers of the bodies that will hear appeals made under this Bill.

125. The Tribunals, Courts and Enforcement Act 2007[18] came into force in July 2007, creating two new generic tribunals, the First-tier Tribunal and the Upper Tribunal. The work of each Tribunal is divided into "Chambers". Each Chamber comprises similar jurisdictions, or jurisdictions which bring together similar types of experts to hear appeals. Each Chamber will operate under rules and procedures tailored to the needs of individual jurisdictions within the Chamber.

126. Appeals in England, Scotland, Wales and Northern Ireland that relate to taxation matters will be heard by the Tax Chamber, which is expected to be operational from 1 April 2009. All other appeals under this Bill in England, Scotland and Wales will be heard by the Social Entitlement Chamber, which commenced operation on 3 November 2008. Non-tax appeals in Northern Ireland will continue to be subject to the regime applicable in Northern Ireland to social entitlement appeals.

127. *Subsection (1)* sets out which tribunal will hear appeals made under this Bill.

128. Under *subsection (1)(a)*, all tax appeals in the UK, and all social entitlement appeals in England, Scotland and Wales, will be heard by the First-tier or Upper Tribunal, as determined

[18] Tribunals, Courts and Enforcement Act 2007 (2007 c.15)

by or under the Tribunal Procedure Rules. These rules are made by the Tribunal Procedure Committee, a body set up by the Tribunals, Courts and Enforcement Act 2007.

129. *Subsection (1)(b)* provides that non-tax appeals in Northern Ireland will be heard by an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998[19] ("the 1998 Order").

130. *Subsection (2)* provides that on a non-penalty related appeal under clause 23(1) or 23(2), the tribunal may confirm or set aside a decision of the Commissioners in its entirety, or otherwise allow an appeal in part.

131. *Subsection (3)* provides that on a penalty related appeal under clause 23(3) or 23(4), the tribunal may confirm or set aside a decision of the Commissioners to impose a penalty, or in those cases where the penalty amount is not fixed in this Bill, confirm, reduce, or increase its amount as considered appropriate, subject to the permitted maximum.

132. Section 11(2) of the Tribunals, Courts and Enforcement Act 2007 provides for appeals against decisions of the First-tier Tribunal on points of law. *Subsection (4)* provides that where the First-tier Tribunal has found a person to be liable for a penalty, that person can, in addition to any right of appeal under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, appeal that decision to the Upper Tribunal. On such an appeal the Upper Tribunal has a similar jurisdiction as conferred on the tribunal under *subsection (3)*. This has effect in England, Wales and Scotland. An equivalent provision for Northern Ireland is made in *subsection (6)*.

133. *Subsection (5)* provides that decisions of an appeal tribunal in Northern Ireland on the Saving Gateway should be treated as if they were made under Articles 13 or 14 of the 1998 Order, for the purposes of Article 15 of that Order. The effect of this provision is that appeals on a point of law against Saving Gateway decisions made by an appeal tribunal in Northern Ireland will be to the Northern Ireland Social Security Commissioner.

134. *Subsection (6)* replicates the effect of *subsection (4)* in relation to penalty appeals in Northern Ireland. It provides that where an appeal tribunal in Northern Ireland has found a person to be liable for a penalty, that person can appeal that decision to the Northern Ireland Social Security Commissioner. On such an appeal the Northern Ireland Social Security Commissioner has a similar jurisdiction as conferred on the tribunal under *subsection (3)*.

135. *Subsection (7)* defines the Northern Ireland Social Security Commissioner for the purposes of this Bill.

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[19] S.I. 1998/1506 (N. I. 10)

Clause 26 Northern Ireland

136. Clause 26 inserts a reference to the Saving Gateway into Schedule 2 of the Northern Ireland Act 1998[20], thus making it an excepted matter for the purposes of the devolution settlement in Northern Ireland (and therefore outside the competence of the Northern Ireland Assembly).

Clause 27 Orders and regulations

137. This clause provides that the power to make an order or regulations under the Bill is exercisable by the Treasury and sets out the Parliamentary procedures that will apply.

138. Any order or regulations must be laid before both Houses of Parliament. There is one exception to this: in accordance with the normal convention concerning tax matters, regulations made under clause 14 will be laid before the House of Commons only.

139. The first exercise of any power to make an order, or to make regulations, under the powers given by the Bill will be subject to the affirmative procedure. The subsequent exercise of those powers will generally be subject to the negative procedure as the powers are considered to be largely administrative and technical in nature.

140. There are five exceptions to this. An order under clause 3(6), which allows the Treasury to amend the list of qualifying benefits or tax credits will always be subject to the affirmative procedure.

141. Regulations made under clause 3(1)(b), prescribing the kind of connection with the United Kingdom that a person must have in order to be an eligible person, regulations made under clause 3(4), which may limit the circumstances in which a person entitled to child tax credit or working tax credit is eligible for a Saving Gateway account, and regulations made under clause 8(1), specifying the rate at which the government contribution is to be paid, will also always be subject to the affirmative procedure.

142. An order under clause 24(6), which allows the Treasury to amend the list of enactments set out in clause 24(5) (provisions of which may be applied by regulations in relation to an appeal under clause 23), will always be subject to the negative procedure.

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[20] Northern Ireland Act 1998 (1998 c.47)

FINANCIAL EFFECTS OF THE BILL

143. Saving Gateway maturity payments will be funded from the Consolidated Fund. Initial estimates of the expenditure arising in 2012/13 (two years after the first Saving Gateway accounts are opened), based on the Government contributing 50p for every pound saved in Saving Gateway accounts, are £130m, then £110m in 2013/14 and £100m in 2014/15. Costs in 2010/11 and 2011/12 are negligible as the government contributions on accounts opened in 2010 will not be payable until 2012/13. The Government expects the annual cost of its contributions to fall to £60m per year in steady state. The expenditure in early years is higher because of the large number of people who will become eligible to open a Saving Gateway account when the scheme is introduced.

144. Estimated implementation and running costs for the Saving Gateway are detailed below. These are based on implementation in 2010. Expenditure in 2008/09 and 2009/10 includes the development costs of the new IT system. The cost for 2010/11 includes marketing and office costs to manage the initial influx of applications expected. Estimates currently show steady state running costs of £1.6m per annum from 2015/16.

2008/09	2009/10	2010/11	2011/12	2012/13
£2.8m	£5.4m	£7.8m	£4.3m	£3.4m

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

145. Work is under way to assess the precise impact of administering the Saving Gateway on public service manpower. On current estimates:

- for HM Revenue and Customs, initial estimates are that there would be an increase above current plans of 129 full-time equivalent staff when the scheme is introduced in 2010, falling to an increase of 59 full-time equivalent staff when the scheme is in steady-state.

SUMMARY OF THE IMPACT ASSESSMENT

146. Account providers will incur costs in administering Saving Gateway accounts. Accurate assessments of these costs cannot be given, because estimating these costs will require further evidence and consultation with potential providers. An update will be provided in a subsequent Impact Assessment, after Royal Assent of this Bill.

147. Providers will also benefit from the use of the funds deposited in Saving Gateway accounts, and from the commercial opportunities that a wider customer base will present. Again, accurate assessments of these benefits cannot be given – further evidence and

consultation with potential account providers will help to form a robust estimate of the monetised benefits. An update on this will be provided in a subsequent Impact Assessment, after Royal Assent of this Bill.

148. The key benefits for account holders will be the government contribution, which will be paid at a rate of 50p for each pound saved in the scheme. In addition to the government contribution, the benefits for account holders will be in terms of developing a saving habit, building a stock of savings, and being brought into contact with mainstream financial services. These benefits, as well as additional benefits to account providers, are difficult to quantify.

149. No carbon or other environmental impact is anticipated from the implementation of the Saving Gateway. The Saving Gateway is available to all savers that meet objective criteria of entitlement to one of the qualifying benefits or tax credits. There is no race, gender or disability equality impact anticipated from the implementation of the Saving Gateway.

150. A copy of the Impact Assessment has been published alongside this Bill as part of *The Saving Gateway: operating a national scheme. Summary of responses*[21] and copies placed in the libraries of both Houses of Parliament and copies are available from the Vote Office. An updated Impact Assessment will be published after Royal Assent of this Bill.

EUROPEAN CONVENTION ON HUMAN RIGHTS

151. Section 19 of the Human Rights Act 1998[22] requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Lord Myners has made the following statement:

152. "In my view, the provisions of the Saving Gateway Accounts Bill are compatible with the Convention rights".

153. The Government has given particular consideration to the following areas.

154. There have been a number of cases which have considered the extent to which the right to receive a payment of some kind will engage Article 1 Protocol 1 (“A1P1”) (right to property) to the Convention for the purposes of Article 14 (right not to be discriminated

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[21] *The Saving Gateway: operating a national scheme. Summary of responses* (HM Treasury and HM Revenue and Customs, December 2008)

[22] Human Rights Act 1998 (1998 c.42)

against). The leading case in this area is the recent House of Lords decision in *RJM v Secretary of State for Work and Pensions* ([2008] UKHL 63), in which the House of Lords considered the leading Strasbourg case of *Stec and Others v the United Kingdom* ((2005) 41 EHRR). The Government considers that a precise analogy cannot be drawn between those cases, which focused on what might be termed classic social security or welfare payments, and the right of an eligible person to receive a maturity payment on the maturity of a Saving Gateway account. Nonetheless, to the extent that the provisions concerning eligibility might engage A1P1 for Article 14 purposes the Government considers those provisions fall within the wide margin of appreciation allowed to the State under the Convention when it comes to general measures of economic or social strategy.

155. The provisions relating to the sharing of information between HMRC and the DWP and the DSD respectively engage Article 8 of the Convention (right to family life and privacy); as do provisions relating to the power of HMRC to obtain information. The Government considers that any interference can be justified as being in accordance with the law and necessary in a democratic society in the interests of the economic wellbeing of the country and for the prevention of disorder or crime.

156. Provisions relating to the imposition of penalties will engage A1P1. To the extent that any penalties are considered to be criminal penalties within the autonomous meaning of the Convention Article 6 (right to a fair trial) rights will also be engaged. The Government is content that the procedural safeguards put in place by the Bill, and in particular the right to appeal to an independent and impartial Tribunal, satisfy the "fair trial" requirements of that Article.

TRANSPOSITION NOTES

157. The Bill does not transpose any European Directive, and so there are no Transposition Notes published alongside it.

TERRITORIAL EXTENT

158. The provisions of the Bill extend to the whole of the United Kingdom.

159. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

160. The provision in the Bill (clause 18) that relates to the supply of information by the Northern Ireland department confers functions on Northern Ireland departments and, as such, requires the consent of the Northern Ireland Assembly. The provision in the Bill amending

Schedule 2 to the Northern Ireland Act 1998 to add Saving Gateway accounts to the list of Excepted Matters set out in that Schedule (clause 26) also requires the consent of the Northern Ireland Assembly in accordance with the principles set out in the Memorandum of Understanding between the Government and the Assembly. A Legislative Consent Motion has been sought for this.

COMMENCEMENT

161. Clauses 28 (money), 30 (commencement) 31 (extent) and 32 (short title) will come into force on Royal Assent. A Treasury order (or orders) will be made setting out when the rest of the Bill will come into force. The Government announced in the 2008 Budget that the first Saving Gateway accounts will be available in 2010.

SAVING GATEWAY ACCOUNTS BILL

EXPLANATORY NOTES

These notes refer to the Saving Gateway Accounts Bill as introduced in the House of Lords on 26th February 2009 [HL Bill 25]

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