

## INTEREST ON DEPOSITS BILL

### EXPLANATORY NOTE

THIS Bill consolidates Parts V and VI of the National Expenditure Adjustment Act 1932 and their amendments. The existing provisions have been rearranged, with alterations, so that the control of rates of interest on deposits with building societies, investment societies, trading companies, and local authorities is now covered by one set of provisions instead of by separate Parts.

The redrafted provisions make it clear than any future Order in Council fixing maximum rates of interest payable on deposits with investment societies will apply whether or not the societies give security for the deposits. At present Part V of the 1932 Act is silent on that point.

*Clause 1* relates to the Short Title.

*Clause 2* defines the terms used in the Bill. In the definition of "contract of deposit" the existing words of exception used in section 57 (1) of the 1932 Act are omitted, as they now appear in *clause 4 (2)*. Also, the present words "at call" are replaced by references to notice or demand, and the reference to "an agreed rate" has been omitted.

The definitions of "investment society" and "trading company" have been redrafted, but have substantially the same effect, except that in the definition of "investment society" the words "whose principal business is the investment of borrowed money" have been substituted for the words used in section 51 (1) (b) of the 1932 Act, namely, "formed for the purpose of investing borrowed moneys".

*Clause 3* combines in one clause the existing power (now in three separate sections) to fix maximum rates of interest on deposits made with building societies, investment societies, trading companies, and local authorities.

*Clause 4: Subclause (1)* makes it clear that any future Order in Council under the Bill, so far as it affects investment societies, will apply whether or not securities are given for the deposits.

*Subclause (2)* re-enacts the existing exemptions for trading companies. The effect is that an Order in Council under the Bill will not apply where a trading company gives security, or where the money is received or becomes owing in the course of a bona fide mercantile current account.

*Clause 5* combines in one clause the powers to grant exemptions from the operation of the Bill. So far as building societies, investment societies, and trading companies are concerned, it re-enacts the present powers of exemption.

*Clause 6* re-enacts the existing provisions as to offences, except that at the end of *subclause (2)* words have been added making it a defence for a director or officer charged under that subclause to prove that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent its commission.

*Clause 7* re-enacts the existing statutory exemptions for banks, savings banks, and certain local authorities and public bodies.

*Clause 8* consequentially repeals the enactments replaced by the Bill.

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*Hon. Mr Lake*

## INTEREST ON DEPOSITS

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### ANALYSIS

Title	4. Effect of orders
1. Short Title	5. Exemptions
2. Interpretation	6. Offences
3. Power to fix maximum rates of interest on deposits	7. Restricted application of this Act
	8. Repeals and savings

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### A BILL INTITULED

**An Act to make better provision for the regulation of the rates of interest that may be paid on deposits of money**

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Interest on Deposits Act 1961.

10 **2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

15 “Contract of deposit” means any contract or agreement (whether written or oral, and whether express or implied) relating to the receipt of money by a borrower upon the terms that the money shall be repaid at a fixed date, or by instalments, or on notice or demand to be given by the lender or by the borrower or by either of them, or on or after the expiration of a fixed period of time after any such notice or demand, and that the money shall  
20 bear interest until repayment:

“Investment society” means any person whose principal business is the investment of borrowed money, or who holds himself out as accepting money on deposit; but does not include a trading company:

“Person” includes any body of persons, whether incorporated or not: 5

“Trading company” means any person who is engaged in any profession or in any trade or business and whose principal business is not the acceptance of money on deposit and the investment of such money. 10

(2) If any question arises whether any person (being either an investment society or a trading company) is properly classifiable as an investment society or as a trading company, the question shall be determined by the Minister of Finance, whose decision shall be final. 15

(3) Where any money becomes owing by a trading company, whether on account of goods supplied or services rendered or otherwise, and under any contract or agreement (whether written or oral, and whether express or implied) the money bears or is to bear interest until repayment, the money shall be deemed to be deposited with the trading company under a contract of deposit on the date on which it commences to bear interest. 20

Cf. 1932, No. 8, ss. 51 (1) (b), 57 (1); 1932, No. 18, ss. 11, 13; 1945, No. 2, s. 18; 1945, No. 45, s. 50 (1) 25

### **3. Power to fix maximum rates of interest on deposits—**

(1) The Governor-General may from time to time, by Order in Council, fix the maximum rates of interest that may be paid—

(a) By any building society on money for the time being deposited with the society pursuant to section 10 of the Building Societies Act 1908; or 30

(b) By any investment society or trading company on money for the time being deposited with it in the course of its business under any contract of deposit; 35  
or

(c) By any local authority within the meaning of Part II of the Local Authorities Loans Act 1956 on money for the time being deposited with it and accepted under the authority of subsection (1) of section 20 40  
of that Act or under any other authority whatsoever.

(2) Any such order may relate to any specified building society, investment society, trading company, or local authority, or to any specified class or classes of building societies or investment societies or trading companies or local authorities, or to all building societies or investment societies or trading companies or local authorities.

(3) Any such order may relate to any specified class or classes of deposits or to all deposits, and may fix different rates of interest in respect of different classes of deposits or according to the amount of any deposit.

(4) Every such order shall, according to its tenor, take effect on the date of its notification in the *Gazette* or on such later date as may be specified in the order.

(5) Any such order may apply to future deposits only, or may apply both to future deposits and to deposits existing at the date on which the order takes effect.

Cf. 1932, No. 8, ss. 51, 58; 1936, No. 16, s. 46 (2)

**4. Effect of orders—**(1) So far as any Order in Council hereafter made under section 3 of this Act applies to deposits made with any investment society, the order shall, unless it otherwise expressly provides, have effect whether or not the contract of deposit under which any such deposit is made is expressed in any mortgage or other security or is expressed in debentures, and whether or not the repayment of the deposit is secured by any charge on the investment society's undertaking or on any of its assets or in any other manner whatsoever.

(2) So far as any Order in Council made under section 3 of this Act, or any Order in Council heretofore made under the National Expenditure Adjustment Act 1932 and enuring for the purposes of this Act, applies to any trading company, it shall not have effect in respect of any deposit if—

(a) The contract of deposit under which the deposit is made is expressed in any mortgage or other instrument by way of security; or

(b) The contract of deposit is expressed in debentures issued in a series by an incorporated company; or

(c) The money to which the contract of deposit relates was received in the course of a bona fide mercantile current account or became owing in the course of any such account, either on account of goods sold by the trading company as an agent or on account of goods supplied to the company.

Cf. 1932, No. 8, s. 57 (1); 1945, No. 2, s. 18

**5. Exemptions**—The Governor-General may from time to time, by Order in Council, exempt any building society, investment society, trading company, or local authority, or any class or classes of building societies or investment societies or trading companies or local authorities, from the operation of this Act, either generally or in respect of any deposits or class or classes of deposits, and either unconditionally or subject to such conditions as may be specified in the order. 5

Cf. 1932, No. 8, ss. 51A, 57 (2); 1945, No. 45, s. 50 (2); 1960, No. 74, s. 2 10

**6. Offences**—(1) If any building society, investment society, or trading company pays or offers to pay, or advertises or otherwise represents that it is willing to pay, interest on money deposited or to be deposited with it in excess of the rate or appropriate rate fixed by any Order in Council made under or enuring for the purposes of this Act, it commits an offence and is liable on summary conviction to a fine not exceeding two hundred pounds. 15

(2) Where an offence against subsection (1) of this section is committed by any building society, investment society, or trading company, every person who at the time of the commission of the offence is a director or manager of the society or company, and every person who at that time is the principal administrative officer of the society or company, shall also be deemed to have committed that offence, and shall be severally liable on summary conviction to a fine not exceeding fifty pounds, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances. 20 25 30

(3) If any local authority pays or offers to pay, or advertises or otherwise represents that it is willing to pay, interest on money deposited or to be deposited with it in excess of the rate or appropriate rate fixed as aforesaid, every member of the local authority who consents thereto shall be liable to a penalty as for an offence to which section 122 of the Local Authorities Loans Act 1956 is applicable. In every such case the provisions of that section and of sections 123 and 124 of that Act (which relate to illegal borrowing) shall apply, with the necessary modifications. 35 40

(4) Every responsible officer of a local authority who accepts or authorises any other officer to accept any money on deposit, on terms providing for the payment of interest in excess of the rate or appropriate rate fixed as aforesaid, commits an  
5 offence and is liable on summary conviction to a fine not exceeding twenty pounds.

Cf. 1932, No. 18, ss. 14 (5), 15

**7. Restricted application of this Act**—Nothing in this Act shall apply to—

- 10 (a) Any bank carrying on business under the Banking Act 1908; or  
(b) The Post Office Savings Bank; or  
(c) Any trustee savings bank established under the Trustee Savings Bank Act 1948; or  
15 (d) Any local authority or public body that is not a local authority within the meaning of Part II of the Local Authorities Loans Act 1956.

Cf. 1932, No. 8, s. 63

**8. Repeals and savings**—(1) The following enactments are  
20 hereby repealed, namely:

- (a) Parts V and VI of the National Expenditure Adjustment Act 1932;  
(b) Sections 11, 13, 14, and 15 of the National Expenditure Adjustment Amendment Act 1932;  
25 (c) Section 46 of the Finance Act 1936;  
(d) Section 18 of the Finance Act 1945;  
(e) Section 50 of the Finance Act (No. 2) 1945;  
(f) Section 36 of the Finance Act 1951;  
(g) The National Expenditure Adjustment Amendment  
30 Act 1960.

(2) The repeal by this section of Part V of the National Expenditure Adjustment Act 1932 shall not affect the amendment made by section 52 of that Act to subsection (1) of section 44 of the Building Societies Act 1908.