



HM Treasury



Department for  
Digital, Culture,  
Media & Sport

# **Consultation on expanding the dormant assets scheme**

**21 February 2020**

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## Ministerial foreword

The success of the UK's dormant assets scheme is a testament to the commitment and drive of the banks and building societies that have been leading the charge on responding to the moral imperative to put assets lying idle to good use.

Since 2011, over £1.2bn from dormant bank and building society accounts has been transferred to Reclaim Fund Ltd (RFL), which has channelled more than £600m towards addressing some of the UK's most pressing social and environmental challenges. This includes the £145m recently allocated to tackling youth unemployment and problem debt.

Dormant assets remain the rightful property of their owners, and the scheme guarantees their right to reclaim the amount owed to them at any time. This underpins the entire scheme, and is crucial to ensuring that everyone—from consumers to firms—trusts and supports it.

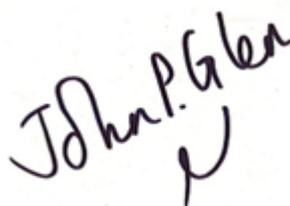
Building on the scheme's success, industry leaders have joined forces to work on the design of an expanded scheme, which they set out in their April 2019 report *The Dormant Assets Scheme: A Blueprint for Expansion*. We are grateful for the time and energy that they have invested in this ambition over the past three years.

Having considered industry's recommendations, the government is now inviting input on the detailed proposals to expand the scheme. We are particularly interested in hearing views from potential participants, consumer groups, regulators, and interested individuals.

Bringing a wider range of financial assets into the scheme presents an opportunity to unlock significant sums of money for good causes. The UK has long been at the global forefront of deploying dormant assets at scale. The expansion enables us to push this frontier even further.



Baroness Diana Barran  
Minister for Civil Society



John Glen MP  
Economic Secretary to the Treasury

## Key terms and acronyms

### Key terms

The Act	The Dormant Bank and Building Society Accounts Act 2008
Asset class and product	A participant may manage a range of asset classes (e.g. shares, insurance policies). Each asset class may include several products (e.g. whole-of-life assurance, savings endowments).
The Commission	The independent Commission on Dormant Assets, which was formed in 2016 and reported to the government in 2017
The Companies Act	The Companies Act 2006
Consumer, customer and owner	The terms ‘consumer’, ‘customer’ and ‘owner’ are used as catch-all terms to refer to the rightful owner of a given asset. For shares, the asset owner would be the shareholder (i.e. the legal owner of the share on the company’s register of members) rather than the beneficial owner.
Dormant asset	A dormant asset is an identifiable and attributable item, valued as a monetary amount or able to be valued as such, which a participant is unable to reunite with its owner despite reasonable efforts.
Participant	The term ‘participant’ is used to refer to firms, companies and other organisations managing assets that might participate in a dormant assets scheme. It does not ordinarily refer to third-party organisations such as registrars or tracing agencies unless specified.
Sector and industry	The term ‘sector’ is used to refer to the four key sectors identified in this document, namely the banking, insurance and pensions, investment and wealth management, and securities sectors. These sectors together comprise ‘industry’.

### Acronyms

ARF	Authorised reclaim fund
BSC	Big Society Capital
DCMS	Department for Digital, Culture, Media & Sport
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services Markets Act 2000
ISA	Individual Savings Account
OEIC	Open-ended investment company
PLC	Public limited company
RFL	Reclaim Fund Ltd
TNLCF	The National Lottery Community Fund
TVR	Tracing, verification and reunification

# 1 Background

## 1.1 Introduction

Responding to the imperative to put assets lying dormant to better use, the dormant assets scheme was established by the Dormant Bank and Building Society Accounts Act 2008 (the Act). It enables participating firms to voluntarily channel funds from dormant accounts (cash accounts with at least 15 years of customer inactivity) towards good causes through an authorised reclaim fund (ARF). In 2011, Reclaim Fund Ltd (RFL) was established by the Co-operative Banking Group (now Angel Square Investments Ltd) and currently remains the only ARF in existence in the UK. The government recognises and applauds RFL's hard work in building confidence and participation in the scheme to date, as well as the part it has played in galvanising industry support for the scheme's expansion.

To date, RFL has received over £1.2bn of dormant accounts from participating banks and building societies. RFL determines how much it must retain in order to meet any future reclaims in perpetuity, and distributes the surplus to The National Lottery Community Fund (TNLCF) (see Figure 1). TNLCF in turn makes these available for good causes across the UK, at the direction of the Secretary of State for Digital, Culture, Media & Sport (DCMS) in England and the respective devolved administrations. So far, the scheme has enabled over £600m to be released, funding a range of impactful programmes. This has included seeding Big Society Capital (BSC), the world's first social investment wholesaler. BSC has used dormant assets money, alongside co-leveraged investment, to help more than 2,000 vulnerable individuals into suitable housing, create over 26,000 jobs and training opportunities, and enable more than 300,000 people to take part in artistic and cultural events. Alongside BSC's successes, £145m has also recently been allocated to two new independent organisations: Youth Futures Foundation (£90m) and Fair4All Finance (£55m). Youth Futures Foundation will tackle youth unemployment, while Fair4All Finance will support the financial wellbeing of consumers in vulnerable circumstances.

In late 2019, the Office for National Statistics (ONS) undertook a classification review of RFL and determined it to be a public body, effective from the date of its establishment by the Co-operative Banking Group. The government is considering the implications of ONS' decision but is clear that it should not affect plans for scheme expansion.

### 1.1.1 Consumer protection

Consumer protection is at the heart of the scheme: customers are always able to reclaim their money, and firms are encouraged to ensure they have the right steps in place to trace customers and reunite them with their assets. Consumers have recourse to the Financial Ombudsman Service (FOS) to resolve disputes about reclaims. They can also make a claim for compensation up to £85,000 (per eligible person, per firm) from the Financial Services Compensation Scheme (FSCS) should RFL become insolvent or unable to meet its reclaim obligations.

This model differs from dormant assets schemes in many other countries, which can be mandatory, impose a time limit on asset owners' ability to reclaim their assets, and/or enable the government to absorb the value of the dormant assets into their treasuries. The government is proud of the UK scheme's operation: our model is seen as an international example of how to successfully use dormant assets for social good, with leadership provided from industry.

### 1.1.2 Scheme expansion

The UK's scheme is currently narrower in its scope than other international schemes, with only

bank and building society accounts included.<sup>1</sup> Over the past three years, industry has been working with the government to consider how best to expand the scheme in the UK. In 2017, the independent Commission on Dormant Assets (the Commission) reported to the government on the potential to expand the scheme to include a wider range of asset classes. In 2018, the government confirmed its support for scheme expansion and called for industry to set out its proposals on how this would happen in practice.

Four senior Industry Champions took on this challenge over 2018. Their report, published in April 2019, made recommendations to industry, the government and regulators on broadening the current scheme beyond bank and building society accounts to include assets from the insurance and pensions, investment and wealth management, and securities sectors.<sup>2</sup> It concluded that primary legislation would be needed.

Significant stakeholder consultation has been undertaken over the past three years, culminating in the Industry Champions convening working groups with circa 80 organisations represented and contributing to their report's recommendations. The government has considered these recommendations and is now launching this public consultation in order to gather a wider set of views on the proposed approach to expanding the scheme.

## 1.2 Principles of the current scheme

The dormant assets scheme is founded on the recognition that it is not in the public interest to leave dormant assets sitting idle. If a customer is unable to be reunited with them, despite firms' reasonable efforts, dormant assets should be directed to good causes, while customers always retain the legal right to reclaim the amount that would have been due to them.

The scheme is underpinned by the following principles, which the government has committed to maintaining as part of any expansion:

1. **Reunification first:** participants' first priority is to trace and reunite people with their assets;
2. **Full restitution:** asset owners are able, at any point, to reclaim the amount that would have been due to them had a transfer into the scheme not occurred; and
3. **Voluntary participation:** potential participants can choose whether to contribute to the scheme and to what extent.

These principles are therefore outside the scope of the consultation.

## 1.3 Operation of the current scheme

Prior to any transfer, participating banks and building societies make attempts to trace customers and reunite them with their assets. Where this proves unsuccessful, firms can transfer the balance of their dormant accounts to RFL on an annual basis. The Act enables the bank or building society's liability to the customer for this asset to be extinguished once it transfers to RFL. In its place, RFL takes on liability to repay the customer for the value of their asset at the point of reclaim. This includes adjusting it for interest and fees, so that customers are repaid the same amount they would have been owed outside of the scheme. Customers have the right to reclaim this amount in perpetuity.

Firms also enter into agency agreements with RFL, which set out how they will work with RFL in more detail. Under these contractual agreements, RFL appoints the bank or building society to act as its agent in all transactions. Customers deal with their bank or building society when reclaiming their account balance. From their perspective, a genuine reclaim should be

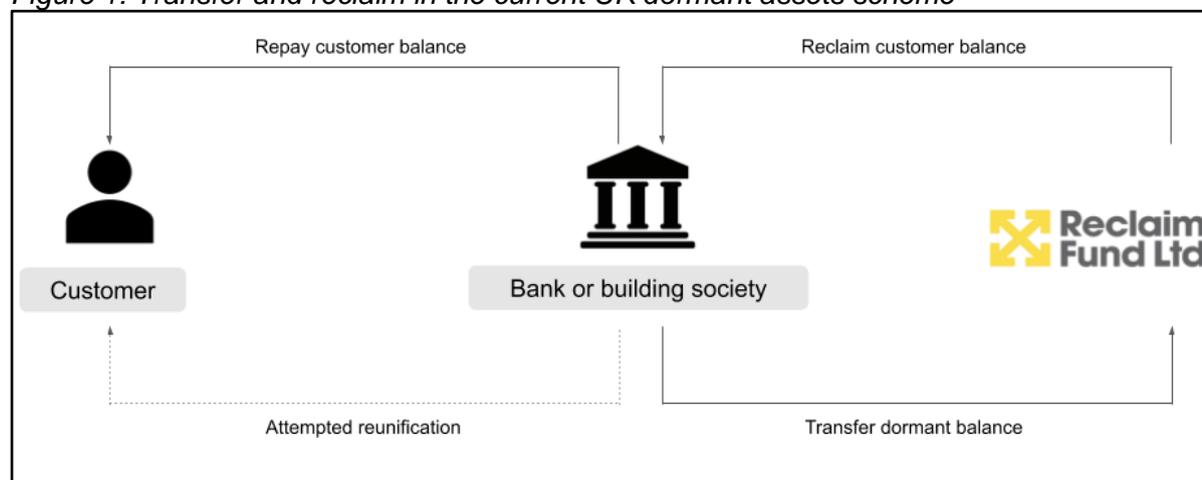
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<sup>1</sup> For example, the Australian dormant assets scheme includes life insurance policies and shares in its scope.

<sup>2</sup> [www.gov.uk/government/publications/the-dormant-assets-scheme-a-blueprint-for-expansion](https://www.gov.uk/government/publications/the-dormant-assets-scheme-a-blueprint-for-expansion)

seamless: the firm verifies a customer’s claim and refunds them at the time of reclaim, before then recouping the amount from RFL on a quarterly basis. Participating banks and building societies must maintain all customer engagement, records and information, as required by their agency agreement with RFL. As transfers to RFL are made in bulk and accompanied with high-level data only, RFL does not receive any personal data.

Figure 1: Transfer and reclaim in the current UK dormant assets scheme

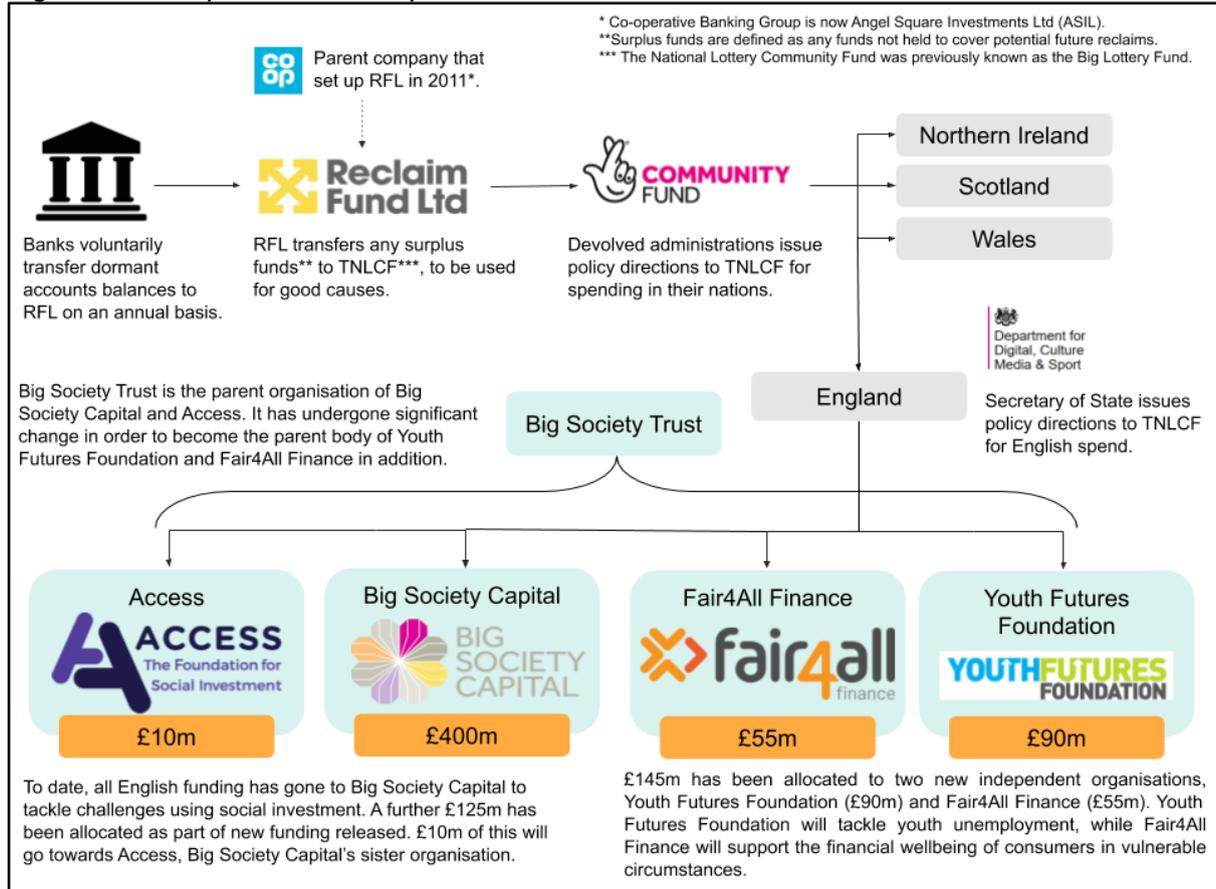


Reclaim rates are rigorously monitored as part of RFL’s reclaim risk modelling, and have remained low since the scheme’s inception.

Once surplus funds are distributed to TNLCF, they are apportioned to each nation in the UK according to the Distribution of Dormant Account Money (Apportionment) Order 2011, which was based on the Barnett formula. Each nation then issues broad directions to TNLCF on how to allocate its portion of the funding to social or environmental purposes. In England, the Act further restricts dormant asset distributions to initiatives relating to social investment, youth or financial inclusion. The focus on these three areas enables the scheme to create a lasting legacy, driving systemic change to address entrenched social issues—and protects this impact from being diluted.

The Act also provides for an alternative scheme, which allows smaller banks and building societies (defined as having total assets of less than £7bn) to transfer an agreed proportion of the balance of their dormant accounts to RFL and the remainder to the local charity of their choice—while RFL takes on the liability to repay the full balance to customers.

Figure 2: The operation and impact of the current UK dormant assets scheme



The government is working with all organisations within this ecosystem to make it easier for the public to access information about how they spend dormant assets funding. This includes ensuring that these organisations commission rigorous, independent and published reviews of their spending, where appropriate, and that these organisations come together to celebrate the positive impact dormant accounts money has on people and communities across the country.

Given the success of the scheme to date, the government confirms that:

- the definition of dormancy for bank and building society accounts will remain at 15 years of customer inactivity;
- the ways in which dormant assets funding can be distributed, allocated and directed will remain unchanged;
- participants will continue to act as agents of an ARF, maintaining customer engagement, records, and personal data on their behalf, and verifying and refunding any customer reclaims before recouping them; and
- the alternative scheme for smaller banks and building society accounts will be maintained.

These operating practices are therefore outside the scope of the consultation.

## 2 Proposals for expanding the scheme

Expanding the dormant assets scheme beyond bank and building society accounts presents a significant opportunity to unlock substantial sums of unclaimed assets for good causes while maintaining and improving consumer protection. Accomplishing this will require primary legislation, as well as amendments to relevant industry rules.

The legislative framework for an expanded scheme will need to set out a number of measures, including:

- definitions of the assets that could be transferred to an ARF;
- definitions of dormancy with respect to each of those assets;
- definitions of eligible participants, including required characteristics;
- the termination of a participant's liability to repay customers the amount transferred, and creation of a liability on the ARF to repay it;
- how an ARF can deal with and distribute dormant asset funds;
- the functioning of the alternative scheme for smaller banks and building societies;
- a requirement for participants to retain certain data following the transfer of an asset into the scheme<sup>3</sup>; and
- other consumer protections.

### 2.1 Scope of an expanded scheme

#### 2.1.1 Scope and definitions of assets

The Commission and the Industry Champions' reports proposed a range of assets for inclusion in an expanded dormant assets scheme. These assets were proposed for a number of reasons, including industry experience of genuine dormancy and potential participants' willingness to transfer them.

The government considered the assets that industry recommended for inclusion, and carried out an initial assessment of the impact and feasibility of including each asset class. In light of this, the government is minded to include the assets set out in Table 1 in the scheme. Non-cash assets would need to be monetised before they could be transferred to an ARF (see Section 2.2.1).

*Table 1: Scope and definitions of assets*

Asset class	
<p><b>Dormant bank and building society account balances (already included in the scheme)</b></p> <p>In line with the current scheme: bank and building society accounts</p>	<p>In line with the current scheme: the balance of accounts held with the bank or building society that have at all times consisted only of money</p>
<p><b>Dormant insurance policy proceeds</b></p>	<p>Proceeds of savings endowments, term insurance, whole-of-life assurance and investment bonds, provided they:</p>

<sup>3</sup> This encompasses any data reasonably needed to verify the eligibility of the relevant financial asset for transfer to an ARF, the accuracy of any information provided to the ARF in connection with the transfer, and the validity of any reclaim.

<p>Proceeds of life insurance policies with a contractual end date:</p> <ul style="list-style-type: none"> <li>● savings endowments</li> <li>● term insurance</li> </ul> <p>Proceeds of life insurance policies without a contractual end date:</p> <ul style="list-style-type: none"> <li>● whole-of-life assurance</li> <li>● investment bonds</li> </ul>	<ul style="list-style-type: none"> <li>● are a “contract of insurance”, as defined in Schedule 1 of the FSMA (Regulated Activities) Order 2001 (RAO); and</li> <li>● crystallise to cash by operation of a contractual, legal or regulatory event<sup>4</sup></li> </ul>
<p><b>Dormant share proceeds</b></p> <p>Proceeds of shares in public limited companies (PLCs) and/or open-ended investment companies (OEICs)</p>	<p>Proceeds of shares, as defined in section 540 of the Companies Act 2006 (Companies Act), provided they are in:</p> <ul style="list-style-type: none"> <li>● UK-registered PLCs, as defined in section 4 of the Companies Act; and/or</li> <li>● OEICs, as defined in section 237(3) of FSMA</li> </ul>
<p><b>Dormant unit proceeds</b></p> <p>Proceeds of units in an authorised unit trust (AUT)<sup>5</sup></p>	<p>Proceeds of units in an AUT scheme, as defined in section 237 of FSMA</p>
<p><b>Dormant investment asset distributions and proceeds</b></p> <p>Distributions and proceeds of investment assets:</p> <ul style="list-style-type: none"> <li>● distributions;</li> <li>● redemption proceeds;</li> <li>● balances from inactive cash accounts; and</li> <li>● orphan monies received after a fund is wound up</li> </ul>	<p>Distributions and proceeds of investment assets, defined as products of a collective investment scheme other than an AUT, as defined in section 235 of FSMA, including:</p> <ul style="list-style-type: none"> <li>● distributions of income;</li> <li>● redemption proceeds;</li> <li>● balances from inactive cash accounts; and</li> <li>● orphan monies received after a fund is wound up</li> </ul>

<sup>4</sup> This refers to a policy that converts to cash when, for example, it reaches its contractual end date or if the customer has died.

<sup>5</sup> Section 235 of FSMA includes proceeds from both OEICs and AUTs. However, a distinction has been drawn between the two as their dormancy definitions differ (see Table 2) in order to align with market practice.

<p><b>Other dormant security distributions</b></p> <p>Dividends and proceeds from corporate actions</p>	<p>Dividends, as defined in section 829 of the Companies Act, and unclaimed proceeds from corporate actions, including:</p> <ul style="list-style-type: none"> <li>• consideration to a company under section 981(6) or held in trust under section 981(9) of the Companies Act (whether before or after the commencement of the Act); or</li> <li>• consideration a company is liable to pay or transfer to a member or creditor pursuant to an order sanctioning a compromise or arrangement under section 899 of the Companies Act (whether that order was made before or after the commencement of the Act)</li> </ul>
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### 2.1.2 Geographic scope

The current scheme covers UK-domiciled dormant accounts, regardless of the nationality of their owner. This is accomplished through both legislative and contractual requirements: the Act specifies that eligible participants must have a head office or branch in the UK, and the agency agreements with RFL require that assets are not held outside the UK or governed by a different jurisdiction. In line with this, the assets set out in Table 1 are recommended for inclusion provided they are held in the UK by a participant with a UK presence, and the terms and conditions of the asset are not governed by a legal jurisdiction outside the UK.

### 2.1.3 Tax neutrality

The assets set out in Table 1 will only be included if the government is assured that the asset transfer and subsequent reclaim would be tax neutral for the participant, asset owner, and ARF. The government is assessing the tax ramifications of including each asset class and what changes to tax legislation and/or regulation are required.

### 2.1.4 Excluding insurance products that do not crystallise to cash

The Industry Champions recommended including specific insurance products on the condition that they crystallise to cash by operation of a contractual, legal or regulatory event (i.e. that the policy converts to cash when, for example, it reaches its contractual end date or the customer has died).

If the products do not crystallise to cash (e.g. an investment bond without a contractual end date and where the participant has not received a death claim), additional legislative arrangements would be required to force crystallisation before they could be included in the scheme. This would raise complex issues around consumer protection. Accordingly, the Industry Champions recommended that such products should be considered at a later date for possible future inclusion—once those that do crystallise to cash have bedded into an expanded scheme. They also recommended that participants in their sector consider amending their practices, where possible, to enable crystallisation to occur.

The government is not considering legislating to include insurance products that do not meet the test of crystallising to cash at this time, given these recommendations and the lack of evidence that these products would be feasible or desirable to include.

### 2.1.5 Excluding pensions

Industry Champions recommended for inclusion certain pensions products that crystallise to cash—namely defined contribution personal pensions, income drawdowns, and deferred and guaranteed annuities. Having carefully considered these recommendations, the government does not believe that these assets should be included in the scheme at this time.

Since the Industry Champions began their work, a number of significant changes to the pensions landscape have been expanded, implemented, or announced, including changes to automatic enrolment, pensions freedoms, and the development of pensions dashboards. Together, these will change the way that savers interact with their pension savings during their working lives and then use their savings to fund their retirement.

A current priority of the government in the pensions landscape is maintaining the level of trust individuals have in their pension savings, and it believes that these changes need time to fully develop. The government is supporting the pensions sector to implement pensions dashboards, which will enable people to see their pension savings in a single place online. This should make it easier to reconnect with accounts where contact has been lost. In addition, automatic enrolment may drive a shift in wider attitudes towards pension saving as it becomes the norm across the population.

**Question 1: Do you have any comments on the proposed scope of assets in an expanded scheme (subject to ensuring tax neutrality)?**

**Question 2: Do you have any comments on the proposed definitions of assets?**

**Question 3: Are there alternative ways of defining the assets?**

**Question 4: Do you have any objections to excluding insurance products that do not crystallise to cash from an expanded scheme at this time?**

**Question 5: Do you have any objections to excluding pensions from an expanded scheme at this time?**

**Question 6: Are there any other assets that the government should consider for inclusion in an expanded scheme?**

#### 2.1.6 Definitions of dormancy

Under the current scheme, a bank or building society account can be defined as dormant after 15 years without customer-initiated activity.

The assets proposed for inclusion within an expanded scheme have different characteristics to bank and building society accounts. In particular, many are long-term savings vehicles where regular customer-initiated activity would not be anticipated. In their report, the Industry Champions recommended that different definitions of dormancy would be required for different asset classes. They also recommended that, where appropriate, the dormancy periods should be aligned with existing industry practices and guidance. The government agrees with both of these recommendations.

To further embed the principles of reunification first and full restitution (see Section 1.2) into an expanded scheme, the government intends to introduce a legal requirement that participants make proportionate and reasonable efforts to reunite assets with their owner prior to transfer to an ARF. These efforts would be based on industry standards and not prescribed in legislation.

The table below outlines the proposed dormancy definitions to be included in legislation. In line with the Act, legislation should define dormancy at the asset level, but allow firms the flexibility to consider other indications as to whether an asset is genuinely dormant (e.g. customer activity on other assets within the same firm).

Table 2: Definitions of dormancy

Asset class	
Dormant bank and building society account balances (already included in the scheme)	Maintain the definition in the current scheme: no transactions have been carried out in relation to the account by or on the instructions of the holder of the account for 15 years; and introduce a new requirement that, in that period, the firm has made reasonable efforts to contact the owner, which have been unsuccessful (see Section 2.2.3). This is not part of the current legislative definition of dormancy, but the banking sector already does so through their '10 core pledges' and as part of their agency agreements with RFL. <sup>6</sup>
Dormant insurance policy proceeds	<p><u>With a contractual end date</u>  <i>If there is a death claim, whichever comes earlier:</i></p> <ul style="list-style-type: none"> <li>• (i) the point at which it is identified that a deceased customer has no next of kin; or</li> <li>• (ii) seven years after a death claim is accepted and there is no ongoing contact with those managing the estate; and, in that period, the participant has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful</li> </ul> <p><i>If there is no death claim:</i></p> <ul style="list-style-type: none"> <li>• seven years after the end of the term; and</li> <li>• in that period, the firm has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful</li> </ul>
	<p><u>Without a contractual end date</u>  <i>Whichever comes earlier:</i></p> <ul style="list-style-type: none"> <li>• (i) the point at which it is identified that a deceased customer has no next of kin; or</li> <li>• (ii) seven years after a death claim is accepted and there is no ongoing contact with those managing the estate; and, in that period, the participant has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful</li> </ul>
Dormant share proceeds	No transactions have been carried out or contact made in relation to the asset by or on the instructions of the asset owner for 12 years and:
Dormant unit proceeds	<p>(i) in that period, the firm has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful; and</p> <p>(ii) where applicable, three distributions or other sums to which the person is or was entitled remain unclaimed or unpaid</p>
Dormant investment asset distributions and proceeds	No transactions have been carried out or contact made in relation to the asset by or on the instructions of the asset owner for six years and:

<sup>6</sup> <https://www.mylostaccount.org.uk/pledges>

	<ul style="list-style-type: none"> <li>• (i) in that period, the participant has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful; and</li> <li>• (ii) where applicable, three distributions or other sums to which the person is or was entitled remain unclaimed or unpaid</li> </ul>
Other dormant security distributions	<p><u>Dividends</u> No transactions have been carried out or contact made in relation to the asset by or on the instructions of the asset owner for 12 years and, in that period, the firm has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful</p>
	<p><u>Proceeds from corporate actions</u> 12 years after the date the company received the consideration; and, in that period, the participant has made proportionate and reasonable efforts to reunite the asset with its owner, which have been unsuccessful</p>

**Question 7: Do you have any comments on the proposed definitions of dormancy?**

**2.1.7 Scope and definitions of participants**

As with the Act, legislation will need to set out which participants are eligible to transfer assets into the scheme. The government's proposals for this are set out below.

*Table 3: Proposed scope and definitions of participants*

Participant	
Banks	As defined in the Dormant Bank and Building Society Accounts Act 2008 in section 7
Building societies	As defined in the Dormant Bank and Building Society Accounts Act 2008 in section 6
Insurance firms	Firms "effecting and carrying out contracts of insurance," as set out in the RAO
Investment management companies	Companies carrying out the activities of "managing investments" and/or "advising on investments" set out in the RAO (articles 37–39 and 53–55, respectively) that are investment firms as defined in the RAO (article 3)
Authorised open-ended investment companies	Further to section 236, as defined in section 237(3) and authorised in accordance with section 243 of FSMA
Authorised unit trusts	As defined in section 237(3) and authorised in accordance with section 243 of FSMA
Public limited companies	As defined in section 4(2) of the Companies Act, and whose shares are listed on the London Stock Exchange

**Question 8: Do you have any comments on the proposed scope of participants in an expanded scheme?**

## 2.2 Operation of an expanded scheme

### 2.2.1 Transfer

The expansion should allow the banking sector to maintain current transfer practices, which have helped underpin the success of the current scheme. The Industry Champions recommended aligning new transfer processes with those of the current scheme as far as possible. In line with the current scheme, this should be set out through a combination of legislative and contractual provisions.

Legislation should specify that non-cash assets must first be monetised before they can be transferred to an ARF. Transferring non-cash assets as they are would put significant strain on any ARF's operational capability, and industry representatives have indicated that such a move might affect confidence and participation levels in the scheme. It would also be more efficient and cost effective for the participant (or share registrar) to monetise the assets itself rather than transferring ownership to an ARF.

Participants will enter into agency agreements with an ARF, which outline how they will work with the fund, including what information would be transferred. They should transfer the value of dormant assets in bulk to an ARF on an annual basis, alongside high-level data, and reclaim quarterly. In cases of particularly large reclaim values, which should be defined in the agency agreements, a participant would be able to reclaim from an ARF immediately.

### 2.2.2 Reclaim

The government fully recognises that maintaining the principle of full restitution (see Section 1.2) will be key to the success of an expanded scheme.

Table 4 sets out the reclaim values that asset owners would be entitled to if their assets were transferred into the scheme. In the case of non-cash assets, owners will receive a cash payment, even if the asset itself could be bought back at the time of reclaim. This is to avoid the administrative burden of participants buying back assets for owners, who would be able to do so themselves following reimbursement. The reclaim value will be calculated by the participant at the point it verifies the reclaim, reimbursed to its owner, and then recouped from the ARF (see Section 2.2.1).

In line with the principle of full restitution (see Section 1.2), these reclaim values can be broadly described as the amount that would have been due to the asset owner had a transfer into the scheme not occurred. As such, they build on market practice.

In the securities sector, where market practice with respect to share forfeiture is relatively diverse, reclaim values would vary according to participating companies' share forfeiture terms. Currently, some companies' terms provide for shareholders to lose their entitlement to a share if a dividend has not been claimed for a set period (usually 12 years) from the date it became payable. At that point, the company can absorb the value of the share into its capital account, leaving the shareholder with no right to payment against the company. Should a shareholder seek to reclaim their share, some companies choose to reimburse them for the value of their share at the time it was forfeited or make some other goodwill payment.

Some companies' terms already enable their boards to use share forfeiture proceeds for any purpose, and could therefore decide to transfer them to an ARF in an expanded scheme.

Other companies may need to introduce or amend existing share forfeiture terms in order to participate in the scheme.

The Industry Champions recommended that shareholders receive the value of their shares at the time they make their reclaim and it is verified, plus any distributions paid since the assets were liquidated and transferred to an ARF. The government welcomes industry’s ambition to raise the bar on consumer protection in this way, but believes that it is for companies to lead the charge. An ARF should stand ready to reflect participating companies’ terms with regard to any share proceeds it receives—including where companies commit to providing the value of the share at the point of reclaim—and capture these in agency agreements with participants. Further, all shareholders of the same class of shares in participating companies should be entitled to the same treatment when reclaiming from a company, regardless of whether their asset is included in the scheme.

So, for example, should a company’s articles of association entitle shareholders whose shares were forfeited to the value of their shares at the time of forfeiture, and a shareholder’s share was valued at £5 at the time of forfeiture, the company would reimburse the shareholder for £5. If the shareholder’s share proceeds had been transferred to an ARF, the company would be able to recoup the £5 from that ARF.

An ARF would need to manage market risk in order to meet reclaims for certain non-cash assets, the value of which could rise (or fall) substantially by the point of reclaim. The government has consulted with RFL, and together we believe that this is possible with the right investment strategy and levels of data sharing, and by prioritising reunification prior to transfer. It is also significant, for RFL’s risk modelling, that the likelihood of an asset being reclaimed decreases over time. There is likely to be a phased introduction of these assets, where RFL first accepts the liability for less volatile assets as it builds capacity to manage this market risk.

*Table 4: Reclaim values by asset class*

<b>Asset class</b>	
Dormant bank and building society account balances (already included in the scheme)	In line with the current scheme: the value of the dormant account, including any accrued interest and adjusted for any fees owed
Dormant insurance policy proceeds	The value of the insurance policy proceeds at the point of crystallisation plus any accrued interest
Dormant share proceeds	In line with participating companies’ share forfeiture terms
Dormant unit proceeds	The value of the units at the time the owner makes their reclaim and it is verified, plus any distributions paid since the assets were liquidated and transferred to an ARF
Dormant investment asset distributions and proceeds	The value of: <ul style="list-style-type: none"> <li>● fund distributions;</li> <li>● redemption proceeds;</li> <li>● inactive cash accounts; and/or</li> <li>● orphan monies</li> </ul> at the time they were due
Other dormant security distributions	The value of: <ul style="list-style-type: none"> <li>● dividends; and/or</li> </ul>

	<ul style="list-style-type: none"> <li>proceeds from corporate actions at the time they were due</li> </ul>
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**Question 9: Do you have any comments on the proposed reclaim values?**

2.2.3 Tracing, verification and reunification

In line with the principle of reunification first (see Section 1.2), tracing, verification and reunification (TVR) efforts are a crucial part of the scheme. Currently, participating banks and building societies follow the ‘10 core pledges’, which include writing at least once to the last known address.<sup>7</sup> The banking sector is confident that these measures are effective, and RFL reports that reclaim rates have remained low since the inception of the scheme. The government recognises and applauds these efforts.

As in the current scheme, all participants will have to make efforts to trace an owner and reunite them with their asset before it can be transferred to an ARF. To better protect this in law, the government is considering two new legislative requirements:

- requiring participants to make proportionate and reasonable efforts, based on best practice within their relevant sector, to reunite the asset with its owner before it can be transferred into the scheme; and
- strengthening an ARF’s ability to decline transfers—including, for example, where it feels the participant has not made proportionate and reasonable efforts to reunite the asset with its owner.

For effective participation and to ensure that only genuinely dormant assets are transferred into the scheme, participating sectors should have in place, and use, best practice guidance on managing dormant assets. Many already do, and the government recognises the hard work that has gone into building these. Accordingly, specific TVR practices (e.g. writing to the last known address) should not be embedded in legislation as this would infringe on participants’ ability to determine practices most suitable for their customers and improve these over time.

2.2.4 Data sharing arrangements

Some of the Industry Champions recommended that the government amend legislation, where necessary, to enable data sharing for the specific purpose of aiding participants’ TVR attempts. There are significant and complex legislative barriers to doing this, and the government is also mindful of how it would impact data privacy.

This is, however, an ongoing piece of work to be considered, and there may also be some approaches we could develop over time that do not require legislation. The government is exploring the role it can play, along with the private sector, in enabling digital identities and attributes to be securely used by private organisations. For example, a pilot was announced in July 2019 that will enable organisations to verify identity information shared with them using British passport data.<sup>8</sup>

This is only a first step towards building a thriving digital identity ecosystem in the UK. We will continue to explore with industry and civil society how government-held data can be safely used to support legitimate business practices which benefit and protect consumer rights.

There may be more that the government or industry can do to support participants’ attempts to reunite dormant assets with their owners, and we invite any contributions to the debate on this aspect of the expansion of the scheme in Question 10.

<sup>7</sup> <https://www.mylostaccount.org.uk/pledges>

<sup>8</sup> <https://www.gov.uk/government/news/new-plans-to-make-it-safer-for-people-to-confirm-their-identity-online>

**Question 10: Do you agree that legislation should make reference to participants making proportionate and reasonable efforts, based on best practice within their relevant sector, to reunite the asset with its owner before it can be transferred into the scheme?**

- Please consider whether there are any other ways that suitable tracing, verification and reunification practices could be encouraged and enabled in participants.

**Question 11: Do you foresee any barriers to participation in the scheme or have any comments on its operation?**

- Please consider the feasibility of including eligible assets that are held within Stocks & Shares ISAs.

#### 2.2.5 Insolvency of a participant

Currently, RFL is liable for meeting reclaims for assets transferred by a firm, even if that firm becomes insolvent or winds up. The Act extinguishes the firm's liability to pay a customer for the asset they put into the scheme, and creates a new liability for this with RFL. As RFL's liability is independent of the firm's, the firm's insolvency would not impact the customer's right to reclaim from RFL.

In practice, while it is difficult to anticipate the specific circumstances surrounding such a situation, there may be two longer-term outcomes:

- either the participant's liquidator or administrator would find another entity to manage the customer records and act as an agent of the ARF to process reclaims; or
- if this was not possible, the liquidator or administrator would transfer the relevant customer records to the ARF, who would then process reclaims directly.

The government's position is that this practice should be extended to all new assets in an expanded scheme. This is with the understanding that, in some cases, the value of the asset at the point of reclaim may be nil.

**Question 12: Do you agree that the existing practice in the event of a participant's insolvency should be extended to all assets in an expanded scheme?**

#### 2.2.6 Insolvency of an ARF

Currently, if RFL were to become insolvent and therefore unable to satisfy the right of a customer to reclaim, the customer is eligible to make a claim for compensation from the FSCS. Currently, the FSCS covers bank and building society customers for up to £85,000 in the case of RFL's insolvency, which is deemed an appropriate protection.

The government is working with the Prudential Regulation Authority and Financial Conduct Authority (FCA) to consider whether FSCS protection should apply if the scheme is expanded and, if so, how this would work.

#### 2.2.7 Phased implementation

The government proposes to legislate to include all assets defined in Table 1 as being within scope. However, we anticipate the implementation of the expansion will be phased. Legislation should ensure that the principle of voluntary participation (see Section 1.2) is maintained, permitting eligible participants to join if and when they are ready to do so. Some eligible participants will have a greater ability to mobilise, build and adopt new processes quickly, and therefore be able to join the scheme sooner. Others may be slower, or have more risk averse attitudes towards transferring certain asset classes. Similarly, some sectors may move faster than others.

Any ARF will also likely accept assets in a phased, managed manner. We expect an ARF to first accept asset classes that do not have market risk associated with them, before moving to those with very low market risk and building up to riskier assets as their confidence and ability to administer full restitution for assets with market variability increases.

### **2.3 Alternative scheme for smaller banks and building societies**

The alternative scheme, which allows smaller banks and building societies (defined as having total assets of less than £7bn) to transfer an agreed proportion of their dormant account balances to an ARF and the remainder to the local charity of their choice, was intended to encourage smaller institutions to participate in the scheme while continuing to support causes close to them. However, it has struggled to attract any interest and only confirmed its first participant in 2019.

In order to ensure the scheme continues to function for its current participants, the government is committed to maintaining the existing alternative scheme for smaller banks and building societies. However, the government will not include provisions for an alternative scheme for participants in any other sector.

### **2.4 Legislative implications**

Changes to legislation and industry rules are needed to realise the expansion.

#### **2.4.1 Legislation**

The Act provides for banks and building societies to transfer the balance of dormant accounts to an ARF, and for the preservation of the customer's right to payment of the balance against the ARF once that has happened. It also provides that the customer's rights are preserved in the event that the bank or building society is dissolved or wound up (see Section 2.2.5). The Act defines eligible participants ("bank or building society") and assets ("balance of a dormant account"), and provides no scope for the scheme to be expanded to cover additional types of participants or assets.

The government has explored non-legislative avenues to addressing dormancy in other sectors—including setting up a reclaim fund(s) independent of the Act to administer dormant assets based on contracts between the fund and participants—and found it unlikely to be viable. These would not provide owners with as strong and guaranteed a right to reclaim as they would have if it were set out in primary legislation. In addition, participants would likely remain liable for owner reclaims in the event of a fund's insolvency, and risk becoming subject to litigation by an owner seeking to recover their transferred asset. Therefore, for the scheme to be expanded to provide similar protections for a broader set of participants and assets, primary legislation is required.

The legislative framework for the expanded scheme will need to set out a range of provisions, as outlined at the beginning of this chapter and more precisely defined throughout it. In addition, further legislative changes may be needed to remove barriers to including certain assets. These could include changes to:

- tax legislation: to enable an asset transfer to the scheme to be tax neutral;
- corporate action court processes: to enable participants to transfer corporate action proceeds into the scheme—rather than follow the current statutory process for these assets to be paid into the court; and
- trustee, director or agent duties: to provide participants, where necessary and appropriate, with immunity for any breach they make of fiduciary duties they hold in taking part in the scheme.

The Industry Champions noted that changes to trustee, director or agent duties would be needed to provide participants with immunity for any breach they make of fiduciary duties they

hold (as trustee, company director, or agent) in transferring eligible assets into the scheme. This may require amendments to the Companies Act 2006, Trustee Act 1925, Trustee Act 2000 and the Trustee Investments Act 1961. The government is considering whether and how legislation may be amended to provide participants, where necessary and appropriate, with immunity for any breach of fiduciary duties they make in participating in the scheme.

With regard to trustees' duties, the framework for trust law is complex and, in addition to the statutory provisions, involves the common law and case law through which the courts have developed the law on trustees and their responsibilities. For example, the duty of trustees to find beneficiaries of the assets of a trust is set by case law (*Hawkesley v May*<sup>9</sup>) rather than statute.

In the case of directors' duties, amending companies' articles of association to include clear provisions on the treatment of dormant assets would be subject to a special resolution of their shareholders.

We welcome views on these issues, as set out in Questions 13 and 14.

**Question 13: How could legislation on trustee, director or agent duties be amended to enable the proposed participants, as set out in Table 3, to take part in an expanded scheme?**

**Question 14: What protections might a trustee, director or agent need in such circumstances?**

#### 2.4.2 Industry rules and best practice guidance

The Industry Champions' report identified FCA rules that may need to be amended to enable participation in an expanded scheme. In addition, the Champions indicated that best practice guidance on TVR would be key to a successful scheme.

#### 2.4.3 Alignment with devolved administrations

Devolved administrations make law around devolved matters. We will need to consider with the devolved administrations how best to ensure that the expanded scheme is aligned and operates effectively across all nations in the UK.

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<sup>9</sup> *Hawkesley v May* [1956] 1 QB 304

## 3 What expanding the scheme means for consumers

The dormant assets scheme is, and will continue to be, underpinned by a commitment to consumer protection. The government recognises and applauds the efforts that participating banks and building societies, as well as RFL, have made to date in reuniting customers with their dormant accounts. The sector's '10 core pledges' have worked effectively to keep reclaim rates consistently low since the scheme's inception, and participating firms are confident in the success of this model. From the customer's perspective, the experience should be seamless.

### 3.1 Maintaining consumer protection

In addition to maintaining the principles of reunification first and full restitution (see Section 1.2), any future legislation should:

- tailor dormancy definitions to what is appropriate for the asset class;
- define dormancy at an asset level, but be flexible enough to enable participants to consider additional indications of dormancy, e.g. customer activity on other assets.

### 3.2 Additional provisions

Expanding the scheme presents the opportunity to fine tune aspects of it. The government is minded to include two important new provisions to further strengthen consumer protection.

#### 3.2.1 Reasonable efforts

The Industry Champions' report recommended introducing a requirement on participants to trace owners before some asset classes could be defined as dormant. For improved consumer protection, as well as to provide consistency, the government is minded to bring in a requirement for all participants to make reasonable efforts to reunite the asset with its owner before transferring it into the scheme.

The government does not intend to specify what these efforts should entail as this would infringe on participants' and sectors' ability to determine practices most suitable for their customers and improve these over time. This would not affect the current scheme's operation, though it may increase the risk of legal challenge to participants' treatment of dormant assets. However, including this provision makes the principle of reunification first (see Section 1.2) explicit and enforceable.

#### 3.2.2 Empowering ARFs to reject transfers

The government is also minded to more explicitly empower an ARF to reject transfers. We believe RFL (or any future ARF) will be better able to support industry efforts to ensure that assets transferred into the scheme are genuinely dormant if they are legally empowered to reject transfers where, for example, they feel the participant has not made sufficient TVR efforts. We fully support the work industry and RFL are doing to build sector-wide standards for TVR.

## 4 Potential impact of expanding the scheme

Expanding the dormant assets scheme has the potential to unlock substantial funds for good causes. The Commission estimated that an additional £1–2bn could be eligible for transfer into an expanded scheme, and the Industry Champions identified reassessing the size and age of dormancy at sector level as a key next step. Building on the scheme's legacy to date, it could have a substantial positive impact on society in the UK and encourage industry to increase its efforts to reunite people with their dormant assets.

Expanding the dormant assets scheme would have implications for multiple stakeholder groups, including scheme participants, any ARF, and wider society who could benefit from funds unlocked for good causes. This consultation will inform the government's continued assessment of the benefits, costs and other impacts of scheme expansion for different stakeholder groups. The government is grateful for the work undertaken by industry so far to support this process and is now welcoming wider views on these impacts.

We anticipate that eligible participants will need time to familiarise themselves with the scheme and determine whether to participate. If they do decide to participate, and an ARF is equipped to administer an expanded scheme, we expect this would bring additional costs, including:

- set-up costs (before and during their first year of participation): setting up the right infrastructure, capabilities and processes to take part in the scheme, and dealing with dormant assets; and
- ongoing costs each year of administering and participating in the scheme: including transferring assets, dealing with them, and managing any reclaims.

In addition to putting assets lying idle to good use, the scheme represents an opportunity for participants to demonstrate their commitment to responsible business, with existing participants reporting reputational benefits. Participation in the scheme may also bring some small financial benefits.

**Question 15: What do you think the set up and ongoing costs of the expansion would be for participants?**

**Question 16: What do you think the initial and ongoing benefits of the expansion would be?**

- In particular, we welcome estimates from potential participants on the value, number and age of dormant assets that they currently hold and could transfer into an expanded scheme, as well as how these figures are expected to evolve over time.

**Question 17: Are there any other significant impacts of the expansion that the government should consider?**

## 5 How to respond

### 5.1 How to respond

This consultation covers the United Kingdom. We welcome comments from all stakeholders who may be interested. The consultation will close at **23:59 on 16 July 2020**.

**Please respond by completing our [online survey](#).**

Alternatively, you can respond by completing the response sheet and emailing it to [dormantassets@culture.gov.uk](mailto:dormantassets@culture.gov.uk).

If you are unable to submit your response electronically, you can post it to Dormant Assets Team, DCMS, 4th Floor, 100 Parliament Street, London, SW1A 2BQ.

If you require a copy in an alternative format or have any questions, please email us at [dormantassets@culture.gov.uk](mailto:dormantassets@culture.gov.uk).

When responding, please state whether you are responding as an individual, or on behalf of an organisation, multiple individuals or multiple organisations. Joint responses with like-minded stakeholders are encouraged. If responding on behalf of multiple individuals or organisations, please make it clear who you are representing and if applicable, how their views were assembled.

### 5.2 Privacy notice

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018 and the General Data Protection Regulation (“the Data Protection Legislation”). This notice only refers to your personal data (e.g. your name, email address, and anything that could be used to identify you personally) not the content of your response to the consultation.

#### 5.2.1 The identity of the data controller and contact details of our Data Protection Officer

The Department for Digital, Culture, Media & Sport (DCMS) is the data controller. The Data Protection Officer can be contacted at [dcmsdataprotection@culture.gov.uk](mailto:dcmsdataprotection@culture.gov.uk).

You can find out more here:

<https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport/about/personal-information-charter>

#### 5.2.2. Why we are collecting your personal data

Your personal data is being used and collected as an essential part of the consultation process, so that we can contact you regarding the consultation and your response.

#### 5.2.3. Our legal basis for processing your personal data

DCMS is a government department. As such, our activities are based on statutory and common law powers which underpin the legal bases that apply for the purposes of the GDPR. Our legal basis for processing your personal data for the purpose of carrying out the consultation is Article 6(1)(e): processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

5.2.4. With whom we will be sharing your personal data

Copies of responses may be published after the consultation closes. If we do so, we will ensure that neither you nor the organisation you represent are identifiable, and any responses used to illustrate findings will be anonymised.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5.2.5. For how long we will keep your personal data, or criteria used to determine the retention period.

Any personal data collected as a result of the consultation will be held for three years after the consultation is closed. This is so that the department is able to contact you regarding the result of the consultation following analysis of the responses.

5.2.6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- see what data we have about you;
- ask us to stop using your data, but keep it on record;
- have all or some of your data deleted or corrected, in certain circumstances;
- lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law.

You can contact the ICO at <https://ico.org.uk/>, telephone 0303 123 1113, or direct post to ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

5.2.7. Your personal data will not be sent overseas.

5.2.8. Your personal data will not be used for any automated decision making.

5.2.9. Your personal data will be stored in a secure government IT system.

## Annex A: List of questions

1. Do you have any comments on the proposed scope of assets in an expanded scheme (subject to ensuring tax neutrality)?
2. Do you have any comments on the proposed definitions of assets?
3. Are there alternative ways of defining the assets?
4. Do you have any objections to excluding insurance products that do not crystallise to cash from an expanded scheme at this time?
5. Do you have any objections to excluding pensions from an expanded scheme at this time?
6. Are there any other assets that the government should consider for inclusion in an expanded scheme?
7. Do you have any comments on the proposed definitions of dormancy?
8. Do you have any comments on the proposed scope of participants in an expanded scheme?
9. Do you have any comments on the proposed reclaim values?
10. Do you agree that legislation should make reference to participants making proportionate and reasonable efforts, based on best practice within their relevant sector, to reunite the asset with its owner before it can be transferred into the scheme?
  - Please consider whether there are any other ways that suitable tracing, verification and reunification practices could be encouraged and enabled in participants.
11. Do you foresee any barriers to participation in the scheme or have any comments on its operation?
  - Please consider the feasibility of including eligible assets that are held within Stocks & Shares ISAs.
12. Do you agree that the existing practice in the event of a participant's insolvency should be extended to all assets in an expanded scheme?
13. How could legislation on trustee, director or agent duties be amended to enable the proposed participants, as set out in Table 3, to take part in an expanded scheme?
14. What protections might a trustee, director or agent need in such circumstances?
15. What do you think the set up and ongoing costs of the expansion would be for participants?
16. What do you think the initial and ongoing benefits of the expansion would be?
  - In particular, we welcome estimates from potential participants on the value, number and age of dormant assets that they currently hold and could transfer into an expanded scheme, as well as how these figures are expected to evolve

over time.

17. Are there any other significant impacts of the expansion that the government should consider?