

Consultation on expanding the dormant assets scheme: response sheet

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 this response sheet and emailing it to 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.

When responding, please state whether you are responding as an individual or on behalf of an organisation. 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.

Please see the following section for information on how any personal data will be handled.

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.

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.

You can find out more here:

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

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.

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.

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.

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.

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.

Your personal data will not be sent overseas.

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

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

RESPONDENT INFORMATION

<p>Respondent(s) <i>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.</i></p>	<p>The Chartered Governance Institute (ICSA). We are the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. The Institute is the professional body that qualifies Chartered Secretaries, which includes company</p>
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	<p>secretaries. Company secretaries have a key role in companies' governance arrangements, including the treatment of dormant assets within companies. Our members are therefore well placed to understand the proposals set out in the consultation on expanding the dormant assets scheme.</p> <p><u>All our responses relate to the proposals to expand the Dormant Assets Scheme to the Securities Sector.</u></p>
Sector (if applicable)	<p>Private</p> <p>IF PRIVATE, please also indicate the subsector(s):</p> <p>We represent all the subsectors listed below.</p> <p>Banking / Insurance & Pensions / Investment & Wealth Management / Securities / Other (delete as applicable)</p>
<p>Future contact <i>May we contact you to discuss your response to this consultation, if necessary?</i></p>	<p>Yes</p> <p>If yes, please provide your contact details:</p> <p>pswabey@icsa.org.uk Tel: 020 7612 7014</p>
<p>Date <i>Please ensure your response is received before 23:59 on 16 July 2020.</i></p>	<p>15 July 2020</p>

RESPONSES

PLEASE NOTE: If you leave a response blank, we will take this to mean that you have no comment on that question.

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

Question	Response (delete as applicable)	Comments

1	NO	We support the proposed scope of assets in an expanded scheme.
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2. Do you have any comments on the proposed definitions of assets?

Question	Response (delete as applicable)	Comments
2	YES	The assets in scope would appear to be only the dormant share proceeds of public companies listed on the London Stock Exchange. However, there are other types of dormant securities such as dividends, proceeds from corporate actions and takeovers or schemes of arrangement. We believe these other assets should be included in the proposed definition of securities assets.

3. Are there alternative ways of defining the assets?

Question	Response (delete as applicable)	Comments
3	YES	Please see our comments under question 2 above.

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

Question	Response (delete as applicable)	Comments
4	NO	We think it is appropriate to exclude insurance products that do not crystallise to cash.

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

Question	Response (delete as applicable)	Comments
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5	NO	We agree that pensions should be excluded from an expanded scheme.
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6. Are there any other assets that the government should consider for inclusion in an expanded scheme?

Question	Response (delete as applicable)	Comments
6	NO	We are not aware of any other asset classes that should be considered for inclusion in the scheme.

7. Do you have any comments on the proposed definitions of dormancy?

Question	Response (delete as applicable)	Comments
7	YES	<p>We have concerns over the definition of dormancy in the consultation.</p> <p>We are aware that the definition of dormancy for securities included in the Industry Blueprint had been arrived at following a great deal of consideration to ensure shareholder protection. However the definition proposed in the consultation does not include the requirement of the Industry Blueprint definition: “A <i>period of no shareholder initiated contact for 12 years...</i>” The consultation definition refers to ‘<i>No transactions [having] been carried out ... for 12 years...</i>’</p> <p>It is frequently the case that a shareholder will not carry out any transactions in relation to their shareholding at any time between initial purchase and eventual sale of the shares. This could be for a substantial period of time and in could be far in excess of 12 years. We therefore do not believe the definition proposed requiring a transaction to be carried out is appropriate. It does not provide sufficient protection for shareholders. The definition could result in the removal of shares from legitimate shareholders who employ a ‘buy and hold’ strategy.</p> <p>For the reasons set out above, we do not believe the proposed definition of dormancy is appropriate and does not provide adequate protection for the holders of the assets in question.</p>

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

Question	Response (delete as applicable)	Comments
8	YES	We believe the securities of AIM listed companies should be included in the scheme.

9. Do you have any comments on the proposed reclaim values?

Question	Response (delete as applicable)	Comments
9	YES	<p>In principle, we believe that companies participating in the scheme should commit to full restitution as set out in the industry champions Blueprint. Where a reclaim is made the full value of the shares at the point of reclaim plus accrued dividends and, in certain circumstances, the value of any corporate actions, should be paid.</p> <p>The majority of companies' articles provide for forfeiture after a certain length of time, but forfeiture is rarely carried out in practice. It would therefore be inappropriate for reclaim values to be based on companies' share forfeiture terms.</p> <p>In addition, the proposals set out in the consultation envisage a reclaim of the value of securities in perpetuity and even in the event of a company's insolvency. Shares in companies are very different from other assets in that their value will increase and decrease at various times, depending on the fortunes of the company. Companies also change over their lifetime, frequently merging with other companies or splitting into separate entities, or being liquidated at the end of their life. It is therefore not feasible to require full restitution in perpetuity and it would be very difficult to maintain some level of restitution in the event of liquidation.</p>

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	Response (delete as applicable)	Comments
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10	YES and NO	We agree it is appropriate that participants should make proportionate and reasonable efforts to reunite assets with their owners, based on best practice within their relevant sector. However, we do not believe this is appropriate for all circumstances. Some dormant shareholdings are very small and the costs of tracing would outweigh the benefits. We therefore believe it would be appropriate to set a 'de minimis' level under which there would be no requirement for the company to undertake tracing before transferring assets to the scheme. In those circumstances, the dormancy criteria alone should suffice.
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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.

Question	Response (delete as applicable)	Comments
11	YES	<p>We have a number of concerns about the proposed operation of the scheme in relation to securities, which we believe will result in companies being unlikely or unable to participate. A number of these concerns are set out in our comments to the questions above. In particular, please see our responses to questions 7 and 9 above.</p> <p>However, our main concern is that participation in the scheme would require companies to amend the provisions in their articles relating to the forfeiture of shares. Standard articles covering the forfeiture of shares are included in the model articles Table A and the majority of public companies include the provisions as set out in Table A, or wording that is very similar.</p> <p>Whilst very few companies ever use the right to forfeiture under the articles, it provides important flexibility for the company to do so if circumstances warrant this action.</p> <p>As such we do not believe that there will be any appetite within companies to change their articles to remove these provisions and, even if companies wished to do so, we think it is unlikely that such a proposal would receive the required shareholder approval.</p> <p>We believe that expanding the scheme to include securities will require legislative changes that override these provisions in companies' articles. Without changes to the Companies Act 2006 to facilitate this, we believe companies that currently administer their own schemes to donate dormant share proceeds to good causes will continue to do so, retaining the flexibility they have. However, due to the costs of administering</p>

		such a scheme at company level, this option is only available to the largest companies. Smaller companies will be unable to administer such a scheme due to the prohibitive costs and will be unable or unwilling to participate in the expanded Dormant Assets Scheme, due to the need to change their articles. As a consequence, we do not believe the proposed scheme will result in an increase in dormant share assets being made available for good causes.
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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?

Question	Response (delete as applicable)	Comments
12	NO	<p>As discussed above in our response to question 9, we do not believe it is appropriate for restitution of share assets in the event of the company's insolvency.</p> <p>We would reiterate our comments in question 9 above that shares in companies are very different from other assets in that their value will increase and decrease at various times, depending on the fortunes of the company. Companies also change over their lifetime, frequently merging with other companies or splitting into separate entities, or being liquidated at the end of their life. It is therefore not feasible to require full restitution in perpetuity and it would be very difficult to maintain some level of restitution in the event of liquidation.</p>

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	Response (leave blank if no response)
13	<p>We believe there is a need for two legislative changes for companies' securities to be included in the scheme.</p> <ol style="list-style-type: none"> 1. It would need to be made clear that directors' duties did not include any ongoing duties to shareholders in relation the proceeds of assets that had been transferred to the Reclaim Fund, possibly by an amendment to Directors' Duties set out in the Companies Act 2006. 2. There would need to be amendments to the Companies Act 2006 to override the standard provisions over forfeiture of shares, which are included in companies' articles.

14. What protections might a trustee, director or agent need in such circumstances?

Question	Response (leave blank if no response)
14	Please see our response to question 13 regarding the need for clarity over any duties of directors in relation to shareholders whose assets had been transferred to the Reclaim Fund.

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

Question	Response (leave blank if no response)
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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	Response (leave blank if no response)
16	We think it is unlikely that the expanded scheme, as proposed, will result in any additional benefits in relation to securities assets.

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

Question	Response (delete as applicable)	Comments
17	YES/NO	