

Dormant Assets Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

BARONESS BARRAN

Page 2, line 2, at end insert –

“(3A) In subsection (3)(a) “amount owing” includes an amount available to be paid as benefits under a personal pension scheme (see section 6 (1)(c) and (3)).”

Member’s explanatory statement

This would ensure that the overview of the dormant assets scheme in Clause 1 reflects Clause 6, which covers amounts available to be paid as pension benefits even though the owner has not made an election as to how the benefits are to be received.

Page 2, line 17, after “of” insert “(or to elect how to receive)”

Member’s explanatory statement

This would ensure that the description of pension assets in Clause 1(5)(c) includes the right to elect how to receive pension benefits.

Page 2, line 22, leave out from first “of” to “any”

Member’s explanatory statement

This would remove words in the description of client money assets in Clause 1(5)(e) that are unnecessary in the light of the government amendment at page 2, line 45 and consequential changes proposed to be made by the government amendments to Clause 12.

Page 2, line 45, at end insert –

“(9) In this Part –

- (a) any reference to an amount owing (or payable) to a person includes a reference to an amount which is not immediately payable to the person only because it is necessary for a request for payment to be made or for the person’s entitlement to payment to be verified, and

Clause 1 - continued

- (b) any reference to the right to payment of an amount owing (or payable) includes, in the case of an amount described in paragraph (a), the right to request payment of the amount.”

Member’s explanatory statement

This would ensure that the provisions of Part 1 relating to transfers of dormant assets to an authorised reclaim fund cover not only cases where an amount is payable immediately (i.e. as a debt) but also cases where the person entitled to an amount needs to request payment, or that person’s entitlement needs to be verified, before the amount becomes payable immediately.

Clause 2

BARONESS BARRAN

Page 3, line 8, leave out “were” and insert “are”

Member’s explanatory statement

This would correct an inconsistency between Clause 2(2)(a) and corresponding provisions elsewhere in Part 1, such as Clause 8(2)(a).

Clause 3

BARONESS BARRAN

Page 3, line 27, after “are” insert “(subject to subsections (2) and (2A))”

Member’s explanatory statement

This amendment is consequential on the government amendment at page 3, line 35.

Page 3, line 28, leave out from “insurance” to “, after”

Member’s explanatory statement

This amendment is consequential on the government amendment at page 3, line 35.

Page 3, leave out line 35 and insert –

“(2A) Proceeds of a contract of long-term insurance held in a Lifetime ISA are excluded from subsection (1) if their transfer to an authorised reclaim fund would result in liability to pay a withdrawal charge to HMRC.”

Member’s explanatory statement

This would secure that insurance proceeds held in a Lifetime ISA are excluded from “eligible insurance proceeds” only when their transfer to a reclaim fund would trigger liability to a withdrawal charge payable to HMRC.

Clause 5

BARONESS BARRAN

Page 5, line 9, leave out “were” and insert “are”

Member's explanatory statement

This would correct an inconsistency of expression between Clause 5(2)(a) and corresponding provisions elsewhere in Part 1, such as Clause 8(2)(a).

Clause 7

BARONESS BARRAN

Page 6, line 43, leave out “the person mentioned in subsection (2)(a) or” and insert “a person mentioned in subsection”

Member's explanatory statement

This would correct two minor errors in Clause 7(3)(b)(ii). The reference to subsection (2)(a) is unnecessary and should be removed. And “a person” at the beginning is more accurate than “the person”, as there may be no person of the kind mentioned.

Page 7, line 14, leave out “proceeds” and insert “benefits”

Member's explanatory statement

This would correct a minor verbal error in clause 7(5)(c), which should refer to “the benefits” i.e. the pension benefits mentioned in the opening words of Clause 7(5).

Clause 9

BARONESS BARRAN

Page 8, leave out line 17

Member's explanatory statement

This amendment is consequential on the government amendment at page 8, line 30.

Page 8, line 18, after “is” insert “(subject to subsection (3A))”

Member's explanatory statement

This amendment is consequential on the government amendment at page 8, line 30.

Page 8, line 30, at end insert —

“(3A) An amount held in a Lifetime ISA is excluded from subsection (3) if its transfer to an authorised reclaim fund would result in liability to pay a withdrawal charge to HMRC.”

Member's explanatory statement

This would secure that an amount held in a Lifetime ISA is excluded from “eligible amount owing by virtue of a collective investment” only when its transfer to a reclaim fund would trigger liability to a withdrawal charge payable to HMRC.

Page 8, line 43, leave out “a sub-fund of an OEIC,” and insert “an umbrella company sub-fund,”

Member's explanatory statement

This would amend Clause 9(5)(a) so that it applies in the case of a wound-up OEIC or sub-fund of an OEIC which is an "umbrella company". The term "umbrella company sub-fund" is defined in the text proposed to be inserted by the government amendment leaving out paragraphs 9(6)(b) and (c) on page 9.

Page 9, line 6, leave out "a sub-fund" and insert "an umbrella unit trust scheme sub-fund"

Member's explanatory statement

This would amend Clause 9(5)(b) so that it applies in the case of a wound-up unit trust scheme or a terminated sub-fund of an umbrella unit trust scheme. The term "umbrella unit trust scheme sub-fund" is defined in the text proposed to be inserted by the government amendment leaving out paragraphs 9(6)(b) and (c) on page 9.

Page 9, line 16, after "scheme" insert "sub-fund"

Member's explanatory statement

This would amend Clause 9(5)(c) so that it applies in the case of a wound-up authorised contractual scheme or a terminated sub-fund of an umbrella co-ownership scheme. The term "umbrella co-ownership scheme sub-fund" is defined in the text proposed to be inserted by the government amendment leaving out paragraphs 9(6)(b) and (c) on page 9.

Page 9, line 25, leave out " ; "umbrella co-ownership scheme" "

Member's explanatory statement

The amendment would leave out words rendered redundant by text proposed to be inserted by the government amendment leaving out paragraphs 9(6)(b) and (c) on page 9.

Page 9, line 27, leave out paragraphs (b) and (c) and insert –

- “(b) “umbrella company sub-fund” means a separate part of the property of an umbrella company that is pooled separately;
- “umbrella unit trust scheme sub-fund” means a separate part of the property of an umbrella unit trust that is pooled separately;
- “umbrella co-ownership scheme sub-fund” means a separate part of the property of an umbrella co-ownership scheme that is pooled separately.”

(7) In subsection (6)–

- “umbrella company” means an OEIC whose instrument of incorporation provides for pooling in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another; and
- “umbrella co-ownership scheme” means an authorised contractual scheme whose contractual scheme deed provides for pooling in relation to separate parts of the scheme property and whose unitholders are entitled to exchange rights in one part for rights in another; and

Clause 9 - continued

“umbrella unit trust scheme” means an authorised unit trust whose trust deed provides for pooling in relation to separate parts of the unit trust property and whose unitholders are entitled to exchange rights in one part for rights in another;

and in this subsection and subsection (6) references to pooling are to such pooling as is mentioned in section 235(3)(a) of FSMA 2000 (collective investment schemes).”

Member’s explanatory statement

This would define the terms “umbrella company sub-fund”, “umbrella unit trust scheme sub-fund” and “umbrella co-ownership scheme sub-fund”, as used in Clause 9(5).

Clause 12

BARONESS BARRAN

Page 11, line 2, after “money” insert “owing to a person”

Member’s explanatory statement

This is a drafting amendment to secure consistency of expression across Part 1 of the Bill in consequence of the proposed removal of subsection (3) of Clause 12 by the government amendment to page 11, line 14.

Page 11, line 5, leave out paragraph (a) and insert—

“(a) a person to whom the amount is payable immediately before the transfer ceases to have any right against any investment institution to payment of the amount, but”

Member’s explanatory statement

This is a drafting amendment to secure consistency of expression across Part 1 of the Bill in consequence of the proposed removal of subsection (3) of Clause 12 by the government amendment to page 11, line 14.

Page 11, line 12, leave out from “happened” to end of line 13

Member’s explanatory statement

This amendment is consequential on the government amendment to leave out subsection (3) of Clause 12.

Page 11, line 14, leave out subsection (3)

Member’s explanatory statement

This amendment, with the other government amendments to Clause 12, would remove references to a person entitled to direct the payment of an amount of dormant eligible client money and brings Clause 12 in line with other similar provisions in Part 1. Cases where payment of a dormant amount needs to be requested, or entitlement verified, before an amount becomes owing (or payable) to a person will be covered by the government amendment to Clause 1 proposed at page 2, line 45.

Page 11, line 26, after “means” insert “(subject to subsection (5A))”

Member’s explanatory statement

This amendment is consequential on the government amendment at page 11, line 31.

Page 11, line 31, at end insert –

“(5A) Client money held in a Lifetime ISA is excluded from subsection (5) if its transfer to an authorised reclaim fund would result in liability to pay a withdrawal charge to HMRC.”

Member’s explanatory statement

This would exclude from “eligible client money” client money held in a Lifetime ISA at a time when its transfer to a reclaim fund would result in liability to pay a withdrawal charge to HMRC.

Page 11, line 32, leave out “subsection (5)” and insert “subsections (5) and (5A)”

Member’s explanatory statement

This amendment is consequential on the government amendment at page 11, line 31.

Clause 13

BARONESS BARRAN

Page 11, line 37, leave out “relevant person” and insert “person to whom the amount is payable”

Member’s explanatory statement

This amendment is consequential on the government amendment to leave out subsection (3) of Clause 12.

Page 11, line 39, leave out subsection (3)

Member’s explanatory statement

This amendment is consequential on the government amendment to leave out subsection (3) of Clause 12.

Page 12, line 6, leave out “the relevant” and insert “a”

Member’s explanatory statement

This amendment is consequential on the government amendment to leave out subsection (3) of Clause 12.

Clause 14

BARONESS BARRAN

Page 12, line 16, leave out “are owed” and insert “is payable”

Member's explanatory statement

This would correct an inconsistency of expression between Clause 14(2)(a) and corresponding provisions elsewhere in Part 1, such as Clause 8(2)(a).

Page 12, line 26, leave out “Act—” and insert “section and sections 15 and 16—”

Member's explanatory statement

This would limit the scope of the definitions in Clause 14(3) to Clauses 14 to 16, as there are other references in the Bill to a share for which the Clause 14(3) definition is inapt.

Page 12, leave out line 28

Member's explanatory statement

This amendment is consequential on the government amendment at page 13, line 4.

Clause 15

BARONESS BARRAN

Page 12, line 38, leave out “held” and insert “registered”

Member's explanatory statement

This would make the language in Clause 15(1) consistent with Clause 14(1)(a).

Page 12, line 38, after “means” insert “(subject to subsection (1A))”

Member's explanatory statement

This amendment is consequential on the government amendment at page 13, line 4.

Page 13, line 4, at end insert —

“(1A) An amount held in a Lifetime ISA is excluded from subsection (1) if its transfer to an authorised reclaim fund would result in liability to pay a withdrawal charge to HMRC.”

Member's explanatory statement

This would secure that an amount held in a Lifetime ISA is excluded from “eligible proceeds or distribution” only when its transfer to a reclaim fund would result in liability to pay a withdrawal charge to HMRC.

Clause 16

BARONESS BARRAN

Page 13, line 25, leave out “held” and insert “registered”

Member's explanatory statement

This would make the language in Clause 16(3)(a) consistent with Clause 14(1)(a).

Clause 17

BARONESS BARRAN

Page 14, line 4, leave out from beginning of line to “does” and insert “a transfer provision”

Member’s explanatory statement

This amendment, with the government amendments at lines 9, 11, 14, 17 and 19 on page 14, would ensure that Clause 17 refers to the correct provisions of Part 1.

Page 14, line 9, leave out “subsection (2)(b) of that section” and insert “the corresponding right to payment provision”

Member’s explanatory statement

See the explanatory statement for the government amendment at page 14, line 4.

Page 14, line 11, leave out from “in” to “(however” and insert “a transfer provision”

Member’s explanatory statement

See the explanatory statement for the government amendment at page 14, line 4.

Page 14, line 14, leave out “a reference in subsection (2)(a) of that section” and insert “the reference in the corresponding extinguishing provision”.

Member’s explanatory statement

See the explanatory statement for the government amendment at page 14, line 4.

Page 14, line 17, leave out “owing,” and insert “by virtue of an extinguishing provision,”

Member’s explanatory statement

This amendment would remove an unnecessary word in Clause 17(4) to ensure it applies correctly to a right to payment of the reclaim amount referred to in Clause 8(2)(b).

Page 14, line 19, leave out from “references” to end of line 20 and insert “to the institution in the transfer provision in question and the corresponding right to payment provision are to be read as references to the successor.

(5) In this section—

“extinguishing provision” means section 2(2)(a), 5(2)(a) or (3)(a), 8(2)(a), 12(2)(a) or 14(2)(a);

“right to payment provision” means section 2(2)(b), 5(2)(b) or (3)(b), 8(2)(b), 12(2)(b) or 14(2)(b); and

“transfer provision” means section 2(1)(a), 5(1)(a), 8(1)(a), 12(1)(a) or 14(1)(a).”

Member’s explanatory statement

See the explanatory statement for the government amendment at page 14, line 4.

Clause 18

BARONESS BARRAN

Page 14, line 43, at end insert –

““withdrawal charge payable to HMRC” means a charge payable under paragraph 8 of Schedule 1 to the Savings (Government Contributions) Act 2017.”

Member’s explanatory statement

This would define “withdrawal charge payable to HMRC” by reference to the primary legislation governing Lifetime ISAs.

Clause 19

BARONESS BARRAN

Page 15, line 18, after “has to” insert “payment of”

Member’s explanatory statement

This is a drafting amendment to secure greater consistency of expression in references to a person’s right to payment of a dormant amount owing.

Clause 22

BARONESS BARRAN

Page 18, line 19, after “5(2)(b)” insert “or (3)(b)”

Member’s explanatory statement

This would amend the definition of “third party” in Clause 22(2) so that it refers to claims arising by virtue of Clause 5(3)(b), as well as those arising by virtue of Clause 5(2)(b).

Clause 24

BARONESS BARRAN

Page 19, line 22, after “5(2)(b)” insert “or (3)(b)”

Member’s explanatory statement

This amendment would ensure that Clause 24(1) refers to claims arising by virtue of Clause 5(3)(b), as well as those arising by virtue of Clause 5(2)(b).

Clause 25

BARONESS BARRAN

Page 20, line 9, after “5(2)(b)” insert “or (3)(b)”

Member’s explanatory statement

This would amend the definition of “repayment claims” in Clause 25(3) so that it covers claims arising by virtue of Clause 5(3)(b), as well as those arising by virtue of Clause 5(2)(b).

After Clause 29

LORD ETHERTON

Insert the following new Clause –

“Review and report

- (1) The review and report to Parliament under section 14 of the 2008 Act (review and report to Parliament) extends to Part 1 of this Act.
- (2) The review and report must include details about –
 - (a) the amount and value of assets transferred from each of the categories in section 1(5),
 - (b) on what persons and activities those assets have been expended pursuant to the purposes of the dormant assets scheme, identifying the amount so expended in relation to each category of persons and activities, and what assets have been successfully claimed from the authorised reclaim fund by the persons entitled to the amount owing before the transfer to the reclaim fund.”

Member’s explanatory statement

This amendment seeks to extend Section 14 of the 2008 Act, which provides for a review and report on Part 1 of the 2008 Act by the Treasury to cover all the assets of the scheme, as expanded by the present Bill. The proposed amendment would also require the review and report to contain more details about the derivation and application of assets transferred to the reclaim fund.

Schedule 1

BARONESS BARRAN

Page 24, line 7, at end insert –

“Financial Services and Markets Act 2000 (c. 8)

1A(1) Part 24 of FSMA 2000 (insolvency) is amended as follows.

- (2) In section 359 (administration order), in the definition of “authorised reclaim fund” in subsection (4), for the words from “means” to the end substitute “has the same meaning as in the Dormant Assets Acts 2008 to 2021 (see section 26 of the Dormant Assets Act 2021);”.
- (3) In section 369A (reclaim funds: service of petition etc on FCA and PRA), in subsection (3) for the words from “means” to the end substitute “has the same meaning as in the Dormant Assets Acts 2008 to 2021 (see section 26 of the Dormant Assets Act 2021)”.

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)

1B(1) Article 63N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (activities of reclaim funds) is amended as follows.

- (2) In paragraph (1) –
 - (a) in sub-paragraph (b) for “account” substitute “assets”, and
 - (b) after sub-paragraph (b) insert “;
 - “(c) dealing with unwanted asset money.”
- (3) In paragraph (2) –

Schedule 1 - continued

- (a) omit the first entry;
- (b) after that entry insert—
 - ““dealing with unwanted asset money” means—
 - (a) the acceptance of transfers of amounts as mentioned in section 21(2)(b) of the Dormant Assets Act 2021, and
 - (b) dealing with those funds (so far as they are not needed for either of the purposes mentioned in section 5(1)(c)(ii) or (iii) of the Dormant Bank and Building Society Accounts Act 2008) with a view to their transfer to the body or bodies for the time being specified in section 16 of the Dormant Bank and Building Society Accounts Act 2008;”;
- (c) in the second entry, for ““dormant account funds”” substitute ““dormant assets funds”, “reclaim fund””;
- (d) in the third entry for the words from the beginning to “the management” substitute—
 - ““management of dormant assets funds” means—
 - (a) the acceptance of transfers of amounts as mentioned in section 1(1)(a) or 2(1)(a) of the Dormant Bank and Building Society Accounts Act 2008 or 2(1)(a), 5(1)(a), 8(1)(a), 12(1)(a) or 14(1)(a) of the Dormant Assets Act 2021,
 - (b) ”;
- (e) at the end of that entry insert “, and
 - (a) dealing with those funds with a view to the transfer of amounts to the body or bodies for the time being specified in section 16 of the Dormant Bank and Building Society Accounts Act 2008.””

Member’s explanatory statement

This amendment would insert a paragraph 1A (making two consequential amendments to references in the Financial Services and Markets Act 2000 to an authorised reclaim fund) and a paragraph 1B (amending the Regulated Activities Order to ensure it reflects the wider activities of a reclaim fund provided for by the Bill).

Page 24, line 18, at end insert—

- “3A(1) In section 1 (transfer of balances to reclaim fund), after subsection (2) insert—
- “(2A) A transfer of the balance of a dormant account as mentioned in subsection (1) does not itself—
 - (a) constitute a breach of trust or fiduciary duty affecting the balance, or
 - (b) give rise to any other liability of any kind (whether against the transferring bank or building society, the reclaim fund or any other person involved), other than the liability of the reclaim fund arising by virtue of subsection (2)(b).”
 - (2) The amendment made by sub-paragraph (1) does not apply in relation to a transfer made before it comes into force.”

Member's explanatory statement

This would make provision in section 1 of the Dormant Bank and Building Society Accounts Act 2008 corresponding to Clause 17(1) of the Bill.

Page 25, line 4, after “transfer” insert “to the body or bodies for the time being specified in section 16(1)”

Member's explanatory statement

This would clarify that a transfer in pursuance of section 5(1)(ca) of the Dormant Bank and Building Societies Act 2008 (as inserted by paragraph 5(2)(c) of Schedule 1 to the Bill) is to be made to the body or bodies specified in section 16(1) of the 2008 Act.

Page 25, line 6, leave out from “2021” to end of line 7 and insert “, except in so far as any of it is needed for the purpose mentioned in paragraph (c)(ii) or (iii);”

Member's explanatory statement

This would ensure that unwanted assets money does not have to be transferred to the body or bodies specified in section 16(1) to the extent that the reclaim fund needs to retain any of it to meet regulatory solvency requirements or to use it to meet relevant expenses.

Page 25, line 9, leave out from “(7)” to end of line 10

Member's explanatory statement

This would remove an unnecessary reference to the deduction of expenses, so that section 5(1)(cb) as inserted by paragraph 5(2)(c) of Schedule 1 to the Bill is consistent with section 2A(7) as inserted by Clause 20.

Page 25, line 22, after “5(2)(b)” insert “or (3)(b)”

Member's explanatory statement

This would amend the definition of “repayment claims” in section 5(6) of the Dormant Bank and Building Society Accounts Act 2008 so that it covers claims arising by virtue of Clause 5(3)(b) as well as those arising by virtue of Clause 5(2)(b).

Page 26, line 46, after “5(2)(b)” insert “or (3)(b)”

Member's explanatory statement

This would amend paragraph 3(2)(a) of Schedule 1 to the Dormant Bank and Building Society Accounts Act 2008 so that it refers to Clause 5(3)(b) as well as Clause 5(2)(b).

Schedule 2

BARONESS BARRAN

Page 28, line 27, leave out “10(6)” and insert “9(5)”

Member's explanatory statement

This would correct an erroneous cross-reference.

Page 28, line 34, after “share” insert “(in sections 14 to 16)”

Member's explanatory statement

This amendment is consequential on the government amendment to Clause 14(3) at page 12, line 26.

Page 29, leave out lines 2 to 6

Member's explanatory statement

This amendment is consequential on the government amendments to Clause 9.

Page 29, line 7, after "company" insert "(in sections 14 to 16)"

Member's explanatory statement

This amendment is consequential on the government amendment to Clause 14(3) at page 12, line 26.

Page 29, leave out line 10 and insert –

“umbrella company sub-fund”	section 9(6)(b) and (7)
umbrella co-ownership scheme sub-fund	section 9(6)(c) and (7)
umbrella unit trust scheme sub-fund	section 9(6)(d) and (7)”

Member's explanatory statement

This amendment is consequential on the government amendments to Clause 9.

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14 June 2021
