

Written Evidence

Finance Bill 2025-26

Reforms to Inheritance Tax –
Unused pension funds,
death benefits, agricultural
property relief and
business property relief

October 2025

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to the Finance Sub-Committee of the House of Lords' call for evidence concerning unused pension funds, death benefits, agricultural property relief and business property relief.¹ The sub-committee has the following comments to put forward for consideration.

Questions

Reforming inheritance tax: unused pension funds and death benefits

Identifying inheritance tax due

1. How challenging will it be for personal representatives to identify and report inheritance tax due on unused pension funds and death benefits?

We are unclear as to the proposed process for Executors. We note that the proposals require the Executors to secure the details of the pension, and, without knowing who the beneficiaries are, determine if inheritance tax (IHT) reporting is due. That suggests that IHT reporting is due if the nil rate bands are exceeded, irrespective of who the beneficiaries are (and, for example, spouse exemption being available).

We understand that it is only after the Executors determine that IHT reporting is required that they request information on beneficiaries. Following this, they obtain details of the beneficiaries and return an IHT account even if no IHT is due. We also understand that this would still require spouse exemption to be claimed, which differs from the current position.

Given this, the proposals appear to prevent an Executor submitting an IHT400 until they know who the beneficiaries are. We would highlight that it can take a significant amount of time for pension trustees to make a decision on distributing

¹ [Call for Evidence - Committees - UK Parliament](#)

pension funds on death. We would further highlight that pension trustees may take legal advice in relation to this, depending on whether there exists a nomination or letter of wishes and depending on the make-up of the deceased's family. It is not uncommon for this process to take a significant amount of time.

We would highlight that this raises the risk of delays to confirmation being granted and the estate being properly administered. This could cause significant issues.

In addition to these specific issues affecting Executors, in cases where personal representatives (PR) were not particularly close to the deceased, it may be extremely difficult to identify pension schemes of which the deceased was a member. Auto-enrolment means that an individual could have an occupational pension attached to every employment they had throughout their lifetime and PRs without some sort of close family connection will not have any knowledge of the deceased's employment history. Even where a pension is in payment, bank statements will not necessarily disclose that – pensions paid quarterly or annually may not appear on statements to which the PR has access. If pension scheme administrators (PSA) only communicate with the member via email or online portals there will be no paperwork available to advise the PR of the existence of the pension.

2. What is your view of the Government's proposals to ensure personal representatives can obtain the information they need from pension providers? How practicable is it?

We have serious concerns regarding the practicality of the UK Government's proposals. Under the proposals, PRs must notify relevant PSAs of the member's death but as we outlined in our answer to question 1, the PR may have no access to information about pensions the deceased held. Furthermore, we understand that the proposed process envisages PSAs making a decision about "the amount(s) due to each beneficiary" at an early stage in the process, before they release the information to the PRs. We would highlight that typically, the decision about who should receive what is left to the discretion of the PSA and consider that the proposed process ignore the time taken to exercise that discretion. PSAs generally seek information about the deceased's will, family and any individuals who might be considered as beneficiaries. In complicated family situations this can be an extremely time-consuming process. Many PSAs will also consider what beneficiaries will receive from other sources, for example, in Scotland where a successful cohabitant claim is made it would not be unusual to see PSAs choose to make payment to the deceased's children over the cohabitant. The proposed process seems to treat a PSA's exercise of their discretion as a simple "rubber stamping" exercise which can be carried out in a matter of days or weeks which is not reflective of the process in all cases.

Liquidity challenges

3. How significant will liquidity challenges be for personal representatives paying inheritance tax due on unused pension funds and death benefits?

We would express some concern around the provisions of clause 4 concerning the implications for executors and the potential impact on their ability to proceed in their duties.

The UK Government indicates that for almost all taxpaying cases, the pension component represents less than 60% of the net value of the estate.² However, it is not clear to us how much of the remaining 40% is represented by illiquid assets, which cannot be realised until after the initial IHT liability has been settled. The UK Government indicates the existing provisions which provide assistance in this case are the Direct Payment Scheme and the ability to pay tax on certain assets by instalments³ but neither of these provisions provide a solution where the majority of the value of the estate is comprised in the deceased's home.

4. How straightforward will it be for personal representatives to recover amounts in respect of inheritance tax from pension beneficiaries?

We would observe that under clause 4(2) of the draft legislation, the clause stating “the vestee must repay the amount to the personal representatives” ignores the practicalities of extracting payment from an individual who may or may not still be in possession of the funds. Where the estate beneficiaries and the pension beneficiaries are different individuals, this is effectively mandating Person A (the Executor) to pay Person B's (the pension beneficiary) tax liability out of Person C's (the estate beneficiary) money. Person A is then required to use their own resources to pursue repayment from Person B while fending off claims from Person C.

We note that this requirement is broadly similar to how tax on failed potentially exempt transfers (PETs) are treated, but we are concerned that the circumstances in which this will be required are being expanded. It is difficult to see how an Executor is expected to balance the conflicting duties. Faced with a choice between paying a tax liability on behalf of a pension beneficiary to whom they owe no duty or leaving the liability outstanding and risking action by HMRC it is not always going to be clear which is the prudent action which should be taken to fulfil the duty owed to the estate beneficiaries.

We are concerned that the provisions in clause 4 may inadvertently exacerbate disputes between Executors and beneficiaries, especially in cases where the

² [Inheritance Tax on pensions: liability, reporting and payment — Summary of responses - GOV.UK](#)

³ [Inheritance Tax on pensions: liability, reporting and payment — Summary of responses - GOV.UK](#)

pension beneficiary is not a close family member. This could lead to increased litigation, placing further strain on the probate process. We recommend that HMRC provide clearer guidance on how Executors should prioritise their duties in such scenarios to mitigate potential conflicts.

Furthermore, we would highlight that where a PR is found to have acted *ultra vires* or breached their fiduciary duty towards the estate beneficiaries by settling a liability due by a third party who is then unable or unwilling to reimburse the estate, the prospect of personal liability arises. It is difficult to see why any individual would agree to act as PR where such circumstances could arise. Where PRs are able to recover funds from pension beneficiaries we would highlight that the provisions under clause 6 of the draft legislation which propose allowing pension beneficiaries to reclaim income tax on pension monies used to fund IHT potentially impose a difficult timeframe. The proposed section 567B of the Income Tax (Earnings and Pensions) Act 2003 provides that, where the IHT is initially paid by the PRs, in order to claim the deduction the PRs must have “passed on the burden of the payment to the beneficiary” before the following 31 January. To “pass on the burden” the beneficiary must either reimburse the PRs or the PRs must pay a sum due to the beneficiary from the estate (which is then reduced by the amount of the IHT paid on the beneficiary’s behalf). If the pension beneficiary receives the pension as a taxed lump sum on 31 March 2028, in order to reclaim the income tax deducted at source, then by 31 January 2029 either (a) they will have to pay the PRs back for the tax paid on their behalf (and thus have paid up to 40+% income tax *and* 40% IHT until the income tax repayment comes through); or (b) the estate will have to be in the process of making distributions to beneficiaries. If the available deduction isn’t fully taken up in year 1 it can be carried forward and used against taxable pension income in future years but a beneficiary who takes a full lump sum in year 1 might not have any other taxable pension income until his own pension kicks in, potentially decades in the future.

Furthermore, we would highlight that HMRC currently do not disclose to Executors whether or not donees of lifetime gifts made within 7 years of death have paid the IHT on these gifts. This is the case even after 1 year has passed, at which point the Executors become liable for the IHT. We would suggest that this is considered by HMRC as in practice Executors may need to liaise with HMRC about how much IHT has been paid by pension beneficiaries.

5. What are your views on the Government’s suggestions as to how personal representatives can manage any liquidity challenges? How else could the Government support personal representatives who face liquidity challenges?

We refer to our answers to questions 3 and 4. In order to assist Executors in managing the practical challenges arising from this legislation, we recommend

that HMRC provide clearer guidance on how Executors should prioritise their duties in such scenarios to mitigate potential conflicts.

Impact

6. Has the Government sufficiently taken into account the impact of the measure on personal representatives and pension schemes administrators?

We refer to our answers under question 3 regarding the practical difficulties that may face Executors under the draft legislation.

We do not consider that the UK Government has taken sufficient account of the additional administrative burden which will be placed on PRs under their proposals. While the UK Government has highlighted that few pension schemes will actually have any IHT liability as a result of this measure,⁴ they have not considered that this process will apply to all estates, meaning every estate will have to go through a complicated administrative process to determine whether or not any IHT liability exists. The additional costs of administration will be borne by the estate beneficiaries and in small estates may represent more of a loss to the beneficiaries than an IHT charge would. This will reduce the sums due to the beneficiaries of small estates, with no corresponding benefit to the treasury.

Implementation and transition

7. How aware of the proposals are those who may be affected by the proposed change? What more should the Government do to raise awareness ahead of April 2027?

We would highlight that due to the outlined impacts on Executors, HMRC should undertake an awareness campaign across all available media formats. We would recommend that HMRC consider holding dedicated information sessions for legal practitioners given the issues we have highlighted concerning the impact on Executors.

8. What are your views on the proposed timetable for the introduction of this measure? Do you think there should be any transitional provisions?

We have no comments.

⁴ [Inheritance Tax on unused pension funds and death benefits - GOV.UK](https://www.gov.uk/government/news/inheritance-tax-on-unused-pension-funds-and-death-benefits)

Reforms to agricultural property relief and business property relief

Identifying and funding inheritance tax due

9. How easy will it be for those affected to report and make arrangements for funding the inheritance tax due, within the statutory six-month period?

We previously commented on HMRC's consultation: *Reforms to inheritance tax reliefs: consultation on property settled into trust*.⁵ The proposed IHT reforms to Agricultural Property Relief and Business Property Relief will have a number of impacts, particularly in relation to trusts. These reforms do create a number of complexities and possible unintended consequences. We have no specific comments on the legislation as proposed and refer to our previous comments. In particular:

*"There may be significant practical difficulties in businesses raising the liquid cash required to meet an Inheritance Tax liability. If the business attempts to build up cash reserves to allow a liability to be met, it risks those cash reserves being treated as excluded property in the assessment of the relief available. Even where sufficient cash reserves exist within the business, the tax liability does not fall on the business itself but on the Executors of the deceased's estate or the Trustees of a Trust. This means that, in order to settle the Inheritance Tax liability the Executors or Trustees will be required to extract the cash, creating an income tax, capital gains tax or corporation tax liability. In these circumstances the combined practical effect of the different tax regimes will give an effective rate of tax far in excess of the 20% which the government has indicated. The interaction of the inheritance tax position with other taxes which may become relevant may require further consideration."*⁶

10. What issues, if any, might arise in relation to obtaining (and agreeing) valuations of qualifying business and agricultural property for inheritance tax purposes?

We refer to our previous comments, in particular:

"In respect of some categories of assets, our members have already reported difficulty in securing the services of a suitably qualified valuer. Even where a professional valuation is available, given the imprecise nature of valuation, HMRC's agreement on the value of the assets transferred will be necessary for every transfer of qualifying business or agricultural property in order that the taxpayer knows either how much of his £1 million allowance remains or how much Inheritance Tax is due on the transfer. Unless there is a mechanism for the taxpayer to obtain HMRC's agreement on the value of the property before he

⁵ [Reforms to inheritance tax reliefs: consultation on property settled into trust](#)

⁶ [Reforms to inheritance tax reliefs: consultation on property settled into trust](#), page 9

*transfers it to the trust he is left in the position that he cannot know whether or not he has incurred a tax liability until HMRC reviews the IHT100 return which he submits. The lack of certainty this creates is unfair. Even if advance agreement on valuation is possible, in volatile business environments, unless HMRC respond to the request extremely quickly, the valuation may not still be accurate by the time the transfer to trust actually takes place. Given ongoing difficulties with HMRC's resourcing we are concerned about the capacity to issue these agreements within the timeframe demanded by a constantly moving business marketplace."*⁷

Impact

11. What are your views on the Government's assessment of the impact of the changes, in terms of the number and type of estates which are affected? For example, do you think that smaller farms will be affected by the changes?

We have no comments.

Implementation and transition

12. Are farmers and business owners prepared for these changes, and what help or support might they need?

Our members' experience is with those who are aware of the changes and whom are in the process of seeking advice from our members about how it might affect them from a legal perspective. We cannot comment on how many farmers and business owners are either unaware of the changes or are seeking advice from other sources.

13. How straightforward will it be for those eligible for the reliefs to identify how the proposed changes will impact their inheritance tax liability, in order that they can plan accordingly?

We refer to our answer to question 9.

⁷ [Reforms to inheritance tax reliefs: consultation on property settled into trust](#), pages 4-5

14. What are your views on the proposed timetable for the introduction of these measures, and do you think there should be any transitional provisions?

We refer to our previous comments, in particular: “*we would express concern about the timeline for draft legislation to be introduced. This is due to the potential for unforeseen consequences and the number of practical complexities that could arise from these reforms.*”⁸

In addition, the period between publication of the draft legislation and the proposals coming into effect being less than nine months makes it very much harder for affected farmers and business owners to adequately prepare for what could be an extremely significant increase in their prospective IHT liability.

Consultation on both measures

15. What are your views on the consultation process the Government has followed in relation to each of these measures?

We have no comments.

⁸ [Reforms to inheritance tax reliefs: consultation on property settled into trust](#), page 2



For further information, please contact:

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