EXPLANATORY MEMORANDUM TO

THE INSURANCE COMPANIES (CORPORATION TAX ACTS) (AMENDMENT) ORDER 2005

2005 No. 3465

1. This explanatory memorandum has been prepared by the Commissioners of Inland Revenue and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 This Order makes amendments to Chapter 1 of Part 12 of the Income and Corporation Taxes Act 1988 (ICTA) and to other provisions of the Corporation Tax Acts affecting insurance companies The primary purpose of the amendments is to modify the provisions of sections 432A and 432B ICTA so as ensure that

- income and gains from certain assets of the company which are in excess of the regulatory solvency and other requirements of the company are not treated as referable to categories of business the income and gains of which are exempt from tax but to basic life assurance and general annuity business, and

- where any income or gains are so treated, an adjustment is made to computation of profit from the exempt categories of business to prevent double counting.

3. Matters of Special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These regulations are being made under powers conferred by section 431A of the Income and Corporation Taxes Act 1988 (as substituted by paragraph 3 Schedule 9 Finance (No. 2) Act 2005.

4.2 This is the first use of a power under section 431A as so substituted. Section 431A(6) permits the regulations (whenever made) to have effect for periods of account beginning on or after 1 January 2005

5. Extent

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury (Ivan Lewis MP) has made the following statement regarding Human Rights:

"In my view the provisions of the Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 are compatible with the Convention rights."

7. Policy Background

7.1 Certain companies carrying on life assurance business have an "inherited estate" - assets representing past profits which have not been distributed to policyholders by way of bonuses, and which are in excess of the capital requirements of that business. In some cases companies carried out a reattribution exercise under which some of its inherited estate is earmarked for shareholders – but until distributed it remains in the long-term insurance fund.

7.2 While the assets remain in the long-term insurance fund, the income and gains arising from them are allocated, under section 432A ICTA to certain categories of business such as pension business where they are exempt from tax. The Order amends section 432A to ensure that the income and gains are only referable to non-exempt business.

8. Impact

8.1 A Regulatory Impact Assessment has not been published for this instrument.

8.2 The Order will have an Exchequer impact, details of which were included in the Pre-Budget Report 2004

9. Contact

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