EXPLANATORY MEMORANDUM TO

THE INDIVIDUAL SAVINGS ACCOUNT (AMENDMENT) REGULATIONS 2014

2014 No. 654

1. This explanatory memorandum has been prepared by H.M. Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

   This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument makes a number of changes to the rules governing the operation of Individual Savings Accounts (ISA), including Junior ISAs. It increases the annual subscription limits for these accounts, modifies the rules concerning which institutions can be approved to offer ISAs, and updates certain definitions set out in ISA legislation to take into account other legislative developments.

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

3.1 In exercise of the powers contained in section 701(4) of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) and section 151(2) of the Taxation of Chargeable Gains Act 1992 (TCGA 1992), regulation 3(c) (definition of European Institution) has effect from 15 August 2013. Section 701(4) ITTOIA 2005 allows for the making of regulations with retrospective effect where those regulations do not impose or increase a liability to tax.

4. Legislative Context

4.1 An ISA is a tax-advantaged savings account. Legislation permitting this type of account was introduced in 1999 (Individual Savings Account Regulations 1998 (S.I 1998/1870) (ISA Regulations). An individual may save in an ISA without being taxed on any income or gains arising from those savings. The amount an individual may subscribe to an ISA in any one year is prescribed by legislation.

4.2 Sections 694 to 699 and 701 of the ITTOIA 2005 allow regulations to be made governing tax exemptions, investments, administration and management of 'individual investment plans', such as ISAs. These powers were formerly in sections 333 to 333B of the Income and Corporation Taxes Act 1988. Section 151 of the TCGA 1992 allows regulations to be made entitling investors to relief from capital gains tax on gains accruing under an individual investment plan.

4.3 The ISA Regulations, which this statutory instrument amends, were made and laid on 31 July 1998 using powers now in sections 694 to 699 and 701 of the ITTOIA 2005 and section 151 of the TCGA 1992.

4.4 ISA Regulation 2 concerns interpretation, and is being amended to update certain definitions used for ISA purposes. Regulations 2C and 12 include special provisions for the opening or management of an account (including a Junior ISA) where an individual is suffering from a mental disorder. These Regulations are being updated to take into account the more relevant concept of ‘mental capacity’, where appropriate.

4.5 Regulations 4ZA and 4ZB set out the maximum amounts which can be subscribed annually to an ISA and a Junior ISA respectively, and are subject to annual uprating. Regulation 4ZE sets out special provisions for the withdrawal of moneys held in a Junior ISA where an account holder is terminally ill. It is being amended in line with relevant social security legislation.

4.6 Regulation 7 specifies the types of investments which qualify for a stocks and shares component of an ISA and is being updated to take into account changes to the investment trust rules set out in the Corporation Tax Act 2010. Regulation 8 sets out the qualifying investments for a cash component of an ISA, and is being amended in line with other changes in this instrument and other enactments.

4.7 Regulation 14 sets out the conditions which must be met for an institution to qualify for approval to offer ISAs, and the type of institutions which can offer these accounts - and is being updated to take into account changes to the rights of certain non-UK based financial institutions to offer services in the UK.

4.8 Regulation 31 sets out the annual reporting requirements for account managers for different types of ISA investments, and is being amended to take into account recent changes to investments that qualify to be held in an ISA.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom, although regulations 4, 7 and 10 contain provisions specific to England, Wales Scotland or Northern Ireland.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why?

7.1 The annual ISA subscription limit is being increased to £11,880 for 2014-2015 (of which up to £5,940 can be invested in a cash ISA). The Junior ISA subscription limit is being increased to £3,840 for the period. This increase is consistent with the Government's annual uprating of ISA limits.

7.2 The instrument extends the definition of terminal illness (in relation to permitted withdrawals from Junior ISA accounts) to include reference to the relevant parts of the Welfare Reform Act 2012, which apply in England, Wales and Scotland. It also inserts a reference to the equivalent provisions in Northern Ireland. The requirement for HMRC to notify an account provider that a withdrawal from a Junior ISA has been authorised on grounds of terminal illness of the account holder will be removed, but HMRC will continue to provide authorisation for a withdrawal. The changes will streamline the process and ensure that the special arrangements for withdrawals from Junior ISAs held by terminally ill children accommodate the introduction of the relevant social security legislation, and reflect the relevant rules and processes that apply in Northern Ireland.

7.3 The instrument updates the special provisions relating to the opening or management of an account where an individual lacks mental capacity, to reflect the introduction, in England and Wales, of the Mental Capacity Act 2005. The change will ensure that, where appropriate, the concept of mental capacity (rather than 'mental disorder') is employed when determining a person's ability to enter into arrangements regarding their account.

7.4 The instrument extends the reporting requirements for ISA managers to take into account that, since August 2013, it has been possible to hold company shares admitted to trading on any market of a recognised stock exchange in the EEA within an ISA.

7.5 The instrument also updates the definition of 'European Institution' and the rules around which institutions can be approved to offer ISA for example, to take into account changes to the rights of certain non-UK based financial institutions to offer services in the UK. It also updates various other definitions used in ISA Regulations, including to reflect the revisions to the investment trust rules set out in the Corporation Tax Act 2010. These changes will ensure consistency with definitions in other enactments and provide clarity for ISA managers and investors.

- Consolidation

7.6 There are no plans to consolidate the regulations governing ISAs.

8. Consultation outcome

8.1 The Instrument has been subject to a short informal technical consultation with specialists within the ISA industry. These changes concern minor technical or administrative updates, for which detailed formal consultation was not necessary. No major issues or difficulties were identified with the substance of the consultation draft.

9. Guidance

9.1 HMRC's Guidance Notes for ISA managers will be updated to reflect the changes to the ISA rules. The Guidance Notes are available at http://www.hmrc.gov.uk/isa/isa-guidance-notes.pdf

10. Impact

10.1 The impact on charities and voluntary bodies is negligible but see paragraph 11.3.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note covering this instrument will be published on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation applies to small businesses that offer ISAs.

11.2 To minimise the impacts of the requirements on small firms employing up to 20 people, the approach taken is to apply the same basic requirements as apply to all businesses offering ISAs, and monitor the impact of these changes.

11.3 The basis for the final decision on what action to take to assist small business is that this instrument only requires minor administrative changes and clarifications that are not expected to have significant implications for any business, including requiring businesses to provide information to HMRC that they are likely to hold already.

12. Monitoring & review

12.1 The changes are intended to update and clarify the ISA rules so that these are clear and take into account other legislative developments. HMRC will continue to review compliance with the ISA rules using the information provided annually by ISA managers.

13. Contact

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