EXPLANATORY MEMORANDUM TO

THE INSURANCE COMPANIES (AMENDMENT TO SECTION 129 OF, AND SCHEDULE 17 TO, THE FINANCE ACT 2012) REGULATIONS 2015

2015 No. 1959

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument amends the tax rules for transfers of long-term life insurance business to ensure that tax neutrality is maintained for all assets and liabilities transferred and that any tax attributes transfer with the part of the business that gave rise to them.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 This is the first exercise of powers under section 129(9) of the Finance Act 2012.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 129 of Finance Act 2012 provides tax neutrality on an intra-group transfer of business. If the transferor and transferee recognise different amounts for the assets and liabilities transferred any difference is taxable or relievable on the transferee. This instrument puts it beyond doubt that the difference is calculated by reference only to assets and liabilities that can give rise to taxable or relievable amounts.

4.2 Paragraphs 13 of Schedule 17 to the Finance Act 2012 allows certain unrelieved receipts and expenses to be transferred to the transferee following an intra-group transfer of part of the transferor's long-term business. This instrument ensures that the amount of these receipts and expenses fairly represents what was attributable to what has been transferred.

4.3 Paragraph 35 of Schedule 17 to the Finance Act 2012 deems assets which were held in an insurance company's shareholder fund as at 31 December 2012 to be part of the long-term business fixed capital of the company. This instrument provides for these assets to maintain this status following an intra-group transfer of all of the long-term business.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

"In my view the provisions of the Insurance Companies (Amendment to section 129 of, and Schedule 17 to, the Finance Act 2012) Regulations 2015 are compatible with the Convention rights".

7. Policy background

What is being done and why

7.1 The rules for intra-group transfers of insurance business aim to provide tax neutrality by ignoring profits or losses that arise on the transfer and preserving tax attributes of the assets and liabilities transferred.

7.2 If there is a difference between the liabilities and assets recognised in each party's balance sheet immediately before and after the transfer, that difference is taxable or relievable on the transferee. This instrument puts it beyond doubt that only assets and liabilities which can give rise to taxable or relievable amounts are included in the calculation of this difference.

7.3 Certain unrelieved receipts and expenses pass from the transferor to the transferee following an intra-group transfer. This instrument ensures that where only part of the insurance business is transferred then those uncrystallised receipts or expenses which are attributable to the part transferred can arise to the transferee. This replaces the calculation by reference to the proportion of liabilities transferred over total liabilities.

7.4 Assets of the shareholder fund as a 1 January 2013 are deemed to be long-term business fixed capital of a life insurance company. This instrument allows these assets to remain long-term business fixed capital following an intra-group transfer, and subsequent intra-group transfers, of all the long-term business. This puts their treatment following such a transfer beyond doubt.

Consolidation

7.5 There are no plans to consolidate the revised primary legislation in the immediate future.

8. Consultation outcome

8.1 Draft regulations were published on 20 July 2015 for an eight week period of technical consultation. A longer period of consultation was not considered necessary as the changes were limited in scope and number.

8.2 Responses to the consultation were received from industry, representative bodies and the tax profession. All supported the change and only relatively minor amendments to the draft Regulations were proposed.

9. Guidance

9.1 Guidance on this change will be incorporated into HM Revenue and Customs' Life Assurance Manual in due course.

10. Impact

10.1 These regulations apply to businesses writing long-term insurance business. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The impact of this instrument will be kept under review to ensure that the policy objectives are met. Regular communication with the life insurance industry will capture issues around implementation and ongoing compliance and administrative costs.

13. Contact

13.1 Darryl Wall at HM Revenue and Customs. Telephone: 03000 595977 or email: darryl.wall@hmrc.gsi.gov.uk can answer any queries regarding the instrument.