

EXPLANATORY MEMORANDUM TO
THE INDIVIDUAL SAVINGS ACCOUNT (AMENDMENT No. 2)
REGULATIONS 2015

2015 No. 869

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

2. Purpose of the instrument

2.1 To permit the spouse or civil partner of a deceased ISA saver to invest additional sums with tax advantages in an ISA, outside the normal annual subscription limit for this account. The instrument sets out various eligibility conditions and rules that apply to these additional ISA investment rights.

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

3.1 The instrument will come into force less than 21 days from being laid before the House of Commons. However, since the Government announced the policy at Autumn Statement 2014, ISA providers, as well as eligible spouses and civil partners, have been preparing for implementation of these changes on 6 April 2015. Any change to this planned implementation date is likely to generate confusion among eligible savers and additional costs for account providers.

3.2 A draft of this instrument was published for consultation on 20 January. The consultation closed on 20 February and a number of responses were received. As a result a number of changes were made to the original draft and further technical discussions took place. These further discussions meant that it was not possible to lay the instrument before the House more than 21 days before commencement.

4. Legislative Context

4.1 ISA is a tax advantaged savings product providing relief from tax to individuals. ISA rules are set out in the Individual Savings Account Regulations 1998 (S.I. 1998/1870) (ISA Regulations).

4.2 Regulation 4 of the ISA Regulations sets out general conditions for ISA subscriptions, and provides that, where appropriate, individuals may only subscribe to a maximum of one cash and one stocks and shares account per year. It also provides that ISA subscriptions must be made in cash - subject to certain exceptions. The annual ISA

subscription limit is specified at ISA Regulation 4ZA. ISA Regulation 5D sets out circumstances in which ISA subscriptions are disregarded for the purposes of this limit, and ISA Regulation 5DF specifies information that an account provider accepting such subscriptions must have.

- 4.3 ISA Regulation 6 sets out general investment rules, including those concerning the eligibility of investments obtained from the spouse or civil partner of an account holder. ISA Regulations 7 and 8 specify what kinds of investments qualify for stocks and shares and cash components of ISA respectively. ISA Regulation 10 specifies who may subscribe to an ISA, and (together with regulation 11) excludes subscriptions by certain individuals who are not resident in the UK. ISA Regulation 12 sets out conditions for an application to open an ISA, including the declaration required from an applicant and the format in which the application must be made. It includes provisions relating to applications and declarations which are not made in writing and makes provision for the making of an application on an individual's behalf where that individual lacks mental capacity or is suffering from a mental disorder. ISA Regulations 21 and 21A set out certain information requirements on an ISA provider in cases where an account is transferred. ISA Regulation 31 concerns returns of information to HMRC by ISA providers.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

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 changes are designed to allow bereaved individuals to benefit from new tax advantages on savings, following the death of their spouse or civil partner who held an ISA. They apply in relation to deaths on or after 3 December 2014.

- 7.2 New ISA Regulation 5DDA will permit additional ISA subscriptions (outside the normal subscription limit at ISA Regulation 4ZA), subject to specified conditions. This new regulation sets out the eligibility conditions and rules for these additional subscriptions, including the time limits and maximum value that may be subscribed. Regulation 5D will be updated to provide that the additional ISA subscriptions permitted under new ISA Regulation 5DDA are to be disregarded for the purposes of the annual ISA subscription limit.

- 7.3 The instrument will also modify the application of other ISA provisions in relation to these additional subscriptions. This includes rules in ISA Regulation 4 concerning the number of accounts an individual can subscribe to in any year (so that additional subscriptions may be made to a new ISA where appropriate), and the form in which a subscription can be made (to allow ‘non cash’ additional subscriptions in certain circumstances). Provisions in ISA Regulation 6 relating to investments obtained from a spouse or civil partner, and restrictions in ISA Regulation 10 on the eligibility of certain non-UK resident individuals to subscribe to an ISA, will also be modified in relation to the additional subscriptions permitted under new ISA Regulation 5DDA.
- 7.4 The instrument will also set out certain information requirements in relation to these additional subscriptions. ISA Regulation 5DF will be modified to require an account provider accepting an additional subscription under new ISA Regulation 5DDA to be provided with certain information. New ISA Regulation 5DFA will require a person wishing to make an additional subscription to give certain declarations to an ISA provider. New ISA Regulation 5DFD applies existing ISA provisions in relation to non-written information and declarations. It also applies ISA rules concerning the supply of information and declarations on behalf of an individual who lacks mental capacity or is suffering from a mental disorder. New ISA Regulation 5DFB sets out the process that will apply where an eligible individual wishes to make an additional subscription to an ISA provider other than the provider which held the deceased’s ISA. New ISA Regulation 5DFC will, in specified circumstances, oblige the ISA provider who held the deceased’s ISA to supply an eligible individual with details of the value of the additional subscription they might make under new Regulation 5DDA.
- 7.5 In relation to these additional subscriptions, the instrument will also modify the declaration required from an applicant wishing to open an ISA (ISA Regulation 12); the information that a provider is required to supply to another provider on the transfer of an ISA (ISA Regulations 21 and 21A); and the information a provider must submit to HMRC (ISA Regulation 31).
- 7.6 The instrument will update ISA Regulation 2(1) to provide a definition of ‘deceased’s account’ for the purposes of this additional subscription. It will also amend regulation 2D to provide that these changes do not apply in relation to Junior ISA accounts.
- Consolidation
- 7.7 There are no plans to consolidate the ISA Regulations.

8. Consultation outcome

8.1 Consultation on the draft instrument opened on 20 January and closed on 20 February. A number of detailed technical responses were received from ISA providers and professional and representative bodies. Following consultation, changes have been made to the draft regulations. These include increased opportunities for eligible individuals to make additional subscriptions to an account provider other than the account provider who held the deceased's ISA; and a new right for an eligible individual to obtain details of the value of the additional subscription they might make under new Regulation 5DDA.

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?utm_source=twitterfeed&utm_medium=twitter

10. Impact

10.1 The changes will affect banks, building societies and other financial institutions which offer ISAs. Many could benefit from additional ISA business as a result of these changes. Subscriptions made under the additional ISA allowance available to spouses and civil partners will require administration by ISA providers. ISA providers will face one-off costs as they make necessary changes to their systems and processes, however these are expected to be less than £3 million in total. Once ISA providers have made the initial changes to their systems and processes to accommodate the additional allowance, it is anticipated the overall impact of the changes will be negligible.

10.2 The impact on charities and voluntary bodies is expected to be negligible.

10.3 The impact on the public sector is expected to be negligible.

10.4 A Tax Information and Impact Note covering this instrument was published on 20th January 2015 alongside draft legislation. This has been updated as a result of this instrument and is available on the HMRC website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

11. Regulating small business

11.1 The instrument 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.

12. Monitoring & review

12.1 HMRC will continue to review compliance with the rules using the information provided annually by ISA providers as well as through regular contacts with ISA providers and other groups.

13. Contact

Simon Turner at HMRC can answer queries regarding the instrument on behalf of HM Treasury - Tel: 03000 546588 or email: simon.turner@hmrc.gsi.gov.uk.