

**EXPLANATORY MEMORANDUM RELATING TO THE
PERSONAL EQUITY PLAN (AMENDMENT) REGULATIONS 2004**

2004 No. 1676

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.

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

2. **Description**

2.1 These regulations reflect the recent changes to the Financial Service Authority ('FSA') rules on authorised collective investment schemes to extend the types of investment that can be held through an FSA authorised Fund of Funds collective investment scheme within a Personal Equity Plan (a 'PEP'). They allow such schemes to hold investments in a mix of Chapter 5 UCTIS schemes, warrant schemes and securities schemes.

2.2 The regulations also introduce additional rules, by reference to a new FSA sourcebook for the purposes of defining a Chapter 5 UCTIS scheme.

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

3.1 None.

4. **Legislative Background**

4.1 Paragraph 3(a) of Section 333 of the Income and Corporation Taxes Act 1988 provides that the Treasury may make regulations to specify the description of individuals who may invest and the kind of investments they may make in a personal equity plan

4.2 Section 151 of the Taxation of Chargeable Gains Act 1992 provides that the Treasury may make regulations providing that an individual who invests under a personal equity plan shall be entitled to relief from capital gains tax in respect of the investments.

5. **Extent**

5.1 This instrument applies to all of the United Kingdom.

6. Policy background

6.1 The FSA regulate the investment and management criteria for collective investment schemes that are authorised by them through the rules set out in their “Collective Investment Scheme Sourcebook”, known as the CIS Sourcebook. Chapter 5 of that sourcebook defines the management rules and types of investments such authorised collective investment schemes can hold.

6.2 In November 2002 the Financial Services Authority introduced changes to Chapter 5 of their CIS Sourcebook in order to implement the UCITS Amending Directive on investment powers (the 'Product Directive', as adopted on 21 January 2002). The changes replaced rules defining a range of separate types of authorised collective investment schemes with a single definition for such schemes known as authorised ‘undertaking for collective investments in transferable securities’ schemes, or Chapter 5 UCITS schemes. However, the old rules were retained for existing schemes, for a transitional period, under Chapter 5A of the CIS sourcebook.

6.3 Under the CIS Sourcebook Chapter 5A rules, Chapter 5A Fund of Fund schemes were authorised to invest in other Chapter 5A schemes or Chapter 5 UCITS schemes but not a mixture of both. As a result of these rules such funds would have been required to dis-invest from Chapter 5A schemes when they converted, as required by the FSA, to a Chapter 5 UCITS scheme. This placed a restriction on the types of schemes that Fund of Funds schemes could invest in that was not the FSA’s policy intent.

6.4 On 20 May 2004 the FSA approved an amendment to Chapter 5A of the CIS sourcebook to allow Chapter 5A Fund of Fund schemes to invest in a combination of Chapter 5A schemes and Chapter 5 UCITS schemes.

6.5 On 1 April 2004 the FSA also introduced their “New Collective Investment Scheme Sourcebook” which will run in parallel with the CIS Sourcebook from 1 April 2004 until the 13 February 2007, when the CIS Sourcebook ceases to have effect. Chapter 5 of this new sourcebook, known by the FSA as the COLL Sourcebook, contains rules that mirror those for Chapter 5 UCITS schemes in the CIS Sourcebook. New UCITS schemes, created from 1 April, will be authorised under the COLL Sourcebook rules, and existing schemes may apply for authorisation under COLL rather than the CIS Sourcebook.

6.6 Paragraph 2 of regulation 6 of the Personal Equity Plan Regulations 1989, as amended by the Personal Equity Plan (Amendment) Regulations 2001 No.923, sets out the types of investment products that can be held within a PEP. These regulations allowed investors to hold Warrant Schemes, Securities Schemes and Fund of Funds Schemes within their PEP, as defined in Paragraph 1(b) of Regulation 2 of those regulations. For simplicity, both for investors and providers, the regulations relied on the CIS Sourcebook definitions for such schemes.

6.7 On the 27 October 2003 the Treasury laid regulations, the Personal Equity Plan (Amendment) Regulations 2003 No. 2748, to reflect the original changes to the CIS Sourcebook made by the FSA in 2002. This brought the new FSA Chapter 5 UCITS schemes into the PEP and reflected the rules for Warrant schemes, Securities schemes and Fund of Fund Schemes set out in Chapter 5A of the CIS Sourcebook. The policy intention was to ensure that schemes that had previously qualified within the PEP

regime retained that status and to extend access to all similar new schemes developed under the revised FSA rules. The regulations relied on the FSA definitions for Chapter 5 UCITS and authorised Chapter 5A Fund of Fund schemes set out in the revised CIS Sourcebook. As a result they imposed the same investment restriction on Fund of Fund schemes as the 2002 FSA rule change and prevented Chapter 5 UCITS schemes qualifying within the PEP regime, this was not the policy intent.

6.8 These regulations are required to reflect the changes made by the FSA to extend the definition of qualifying investments to Chapter 5 UCITS schemes authorised by the CIS Sourcebook and the new COLL Sourcebook.

7. Impact

7.1 A Regulatory Impact Assessment has not been published for this instrument. The regulations merely reflect changes introduced by the FSA, to ensure schemes that remain authorised by the FSA under their new rules can continue to provide PEP investments and prevent additional burdens being imposed on the financial industry by the PEP regulations. Any impacts on the industry are negligible.

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