EXPLANATORY MEMORANDUM TO

THE INDIVIDUAL SAVINGS ACCOUNT (AMENDMENT No. 3) REGULATIONS 2017

2017 No. 1089

1. Introduction

1.1 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 The instrument will allow Individual Savings Accounts (ISAs) to retain their tax advantaged status after the death of the account holder. The effect will be that, subject to certain time limits, personal representatives and beneficiaries or legatees should not face income tax or capital gains tax on investments retained in an ISA during the administration of a deceased saver's estate. The instrument also modifies the additional ISA allowance available to surviving spouses or civil partners of deceased ISA savers to take account of this change.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution 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 The ISA rules are set out in the Individual Savings Account Regulations 1998 (SI 1998/1870) as amended. These are made under sections 694 to 699 and section 701 Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and section 151 Taxation of Chargeable Gains Act 1992 (TCGA).

4.2 Section 62 of TCGA sets out rules concerning deemed acquisitions and disposals of the assets of a deceased person, and chargeable gains in relation to that deceased person, their personal representative and legatees.

4.3 ITTOIA and TCGA were updated by section 27 of the Finance Act 2016 to enable regulations to be made extending ISA tax advantages after the death of an account holder. In addition, this section permits regulations to have effect in place of specified provisions of section 62 TCGA.

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 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 This instrument will allow ISA income tax and capital gains tax advantages to continue to apply to funds held within ISA accounts (other than Junior ISA accounts) after the death of an account holder. The intention is to reduce the tax chargeable on savings income after the death of an ISA saver and simplify the tax-advantaged transfer of ISA savings on death.

7.2 The instrument updates the ISA Regulations to provide that investments held in an ISA after the death of the account holder are 'administration-period investments' held in a 'continuing account of a deceased investor' until the earlier of the administration of the estate being finalised, the closure of the account, or three years after the account holder's death. It also provides that no new subscriptions can be made to a continuing account of a deceased investor after the death of the account holder, and that such an account cannot be transferred between ISA providers, other than in specified circumstances.

7.3 The instrument also modifies terms such as 'account investment', 'qualifying investment', 'investments under an account', 'investments', 'account investor' 'applicant', 'Lifetime ISA' and 'account' in relation to continuing accounts of a deceased investor. Among other matters, these modifications will allow personal representatives to give instructions to account providers in relation to these accounts, and will also allow personal representatives and legatees to benefit from ISA tax advantages.

7.4 The instrument also introduces new capital gains tax rules in relation to administration period investments, in place of those at section 62 TCGA (which treats the acquisition of assets by a personal representative of a deceased person as if it had been made by a legatee). In particular, it sets out rules concerning when a legatee is treated as having acquired the investment, and the point at which the value of these investments is considered, for the purposes of any future chargeable gains of the legatee.

7.5 Various other minor modifications are made throughout the ISA Regulations to accommodate continuing accounts of deceased investors – including to the rules at ISA Regulations 21 and 21A concerning transfers, and to the information that account providers are required to provide to HMRC under ISA Regulation 31.

7.6 The instrument also modifies the additional permitted subscription (APS) available to spouses and civil partners of deceased ISA holders. The value of the APS available is currently equivalent to the value of ISA savings held by the deceased account holder on the date of death. This instrument will allow the APS to be set at the higher of the value of ISA investments held on the date of death, or at the point when the account ceases to be a continuing account of a deceased investor.

Consolidation

7.7 There are no plans to consolidate the ISA Regulations.

8. Consultation outcome

8.1 Draft regulations were published for an eight week technical consultation in February 2017. Seven responses were received, mainly from ISA providers and industry bodies. Respondents provided views on the most suitable date for the new rules to take effect and sought clarification of, or suggested minor drafting changes to the regulations to improve clarity. Having considered the responses and the needs of investors and ISA managers, the government intends the regulations to have effect from 6 April 2018.

9. Guidance

9.1 HMRC's Guidance Notes for ISA providers will be updated to reflect the changes to the ISA rules. The Guidance Notes are published at https://www.gov.uk/government/publications/guidance-notes-for-isa-managers

10. Impact

10.1 The impact on business is that the change will affect the around 500 banks, building societies and other financial institutions that offer and manage ISAs. The overall impact on business is expected to be negligible.

10.2 There is no impact on charities or voluntary bodies.

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

10.4 A Tax Information and Impact Note for this measure was published as part of Autumn Statement 2015 and is available on gov.uk https://www.gov.uk/government/publications/income-tax-extending-individual-savings-account-tax-advantages-after-the-death-of-an-account-holder/income-tax-extending-individual-savings-account-tax-advantages-after-the-death-of-an-account-holder

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

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 monitor the effect of the measure using the information provided annually by ISA managers as well as through regular contact with ISA providers and other bodies.

13. Contact

13.1 Owen Price at HM Revenue and Customs Telephone: 03000 512336 or email: savings.audit@hmrc.gsi.gov.uk can answer any queries regarding the instrument.