
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 8th August 2012, amend the Individual Savings Account Regulations 1998 (S.I. 1998/1870) (“the ISARegulations”).

Regulations 1 to 3 provide for the citation, commencement and times from when these Regulations have effect. The amendments made by regulations 5(a) and 13 have effect from 1st November 2011. The amendments made by regulations 6, 16(b), (c) and (d), 18(a) and (b) and 19 (and the amendments made by regulation 5(b) to (d) so far as they relate to those amendments) have effect from 9th November 2011. The other amendments to the ISARegulations have effect from when these Regulations come into force.

The power to make regulations having effect in relation to times before they are made (provided they do not impose or increase any liability to tax) is conferred by section 701(4) the Income Tax (Trading and Other Income) Act 2005 (c.5) and section 151(2) of the Taxation of Chargeable Gains Act 1992 (c. 12).

Regulations 4 to 6 insert new definitions and amend others in regulation 2 of the ISARegulations.

Regulations 7 and 8 amend regulation 2A(4) of the ISARegulations (meaning of account investor) and regulation 2D of those regulations (regulations that do not apply to accounts that are junior ISA accounts) in consequence of the amendments made by regulation 11 of these Regulations.

Regulation 9 inserts regulation 2F so that regulations 2C(4)(b) (meaning of registered contact etc.) and 12A(4)(b)(i) (conditions for application to open an account that is a junior ISA account) must be construed as if the Share Foundation organisation has parental responsibility in relation to a child described in regulation 2F (a “Looked After Child”).

Regulation 10 omits regulation 5B of the ISARegulations which has no effect in relation to subscriptions made after 5th April 2011.

Regulation 11 inserts new regulations 5D to 5DM into the ISARegulations. The new regulations 5D to 5DM provide as follows.

Regulation 5D provides that a defaulted cash account subscription, defaulted investment subscription and a subscription permitted by regulation 5DE are disregarded for the purposes of the annual amounts that may be subscribed to ISA accounts (including junior ISA accounts) in accordance with regulations 4ZA and 4ZB of the ISARegulations if the information specified in regulation 5DF is provided to the account manager.

Regulations 5DA and 5DC provide that a defaulted cash account subscription is a subscription made to a cash account or a stocks and shares account before the expiry of 180 days from when an account manager of a cash account is, in accordance with the rules of the scheme for compensation established pursuant to section 213 of the Financial Services and Markets Act 2000, determined to be unable or likely to be unable to satisfy claims against the account manager provided the subscription does not exceed the amount in the account (including accrued interest) at the time of the default.

Regulations 5DB and 5DD provide that a defaulted investment subscription is a subscription made to a stocks and shares account before the expiry of 180 days from a payment (defaulted investment payment) by way of compensation etc. in respect of the poor performance etc of an investment held in a stocks and shares account (except where the payment is made as an accretion to the account) provided the subscription does not exceed the amount of the payment.

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Regulation 5DE permits a subscription to be made to a junior ISA account that is a cash account if it would have been a defaulted investment subscription if it had been made to a stocks and shares account.

Regulation 5DF describes the information which must be provided to the account manager when a subscription under regulation 5D is made.

Regulation 5DG provides that only one regulation 5D subscription may be made in respect of a defaulted cash account or defaulted investment payment even if the amount subscribed is less than the maximum that could have been subscribed.

Regulation 5DH provides that anything occurring in the period commencing on the 6th April 2011 and ending on 7th August 2012 will be treated as occurring on 8th August 2012 if it would have been a default event within the meaning in regulation 5DC or a defaulted investment payment within the meaning in regulation 5DD if it had occurred on that day.

Regulations 5DI to 5DM make special provision in respect of investments defined in regulation 5DI as a “Lehman Brothers investment” and a “Keydata investment”.

In relation to a Lehman Brothers investment held by an account investor on 15th September 2008, regulations 5DK and 5DL deem a single defaulted investment payment as made on 8th August 2012 of an amount which is the greater of the total of defaulted investment payments made or treated as made on that day and the value of the investment at the opening of trading on the London Stock Exchange on the 15th September 2008. In relation to a defaulted investment payment made or treated as made on 8th August 2012, a defaulted investment subscription may only be made in respect of the single defaulted investment payment treated as made on that day. In relation to a defaulted investment payment made in respect of the investment after 8th August 2012, regulation 5DL(3) provides that the amount of such a payment is to be treated (after taking account of defaulted investment subscriptions already made) as the greater of the value of the investment on 15th September 2008 and the total of the single defaulted investment payment treated as made on 8th August 2012 and all later defaulted investment payments (including the payment in question).

Regulation 5DM provides that regulations 5DJ to 5DL apply to a Keydata investment held by an account investor on 8th June 2009. In respect of the single defaulted investment payment treated as made on 8th August 2012, it provides that the amount of the single defaulted investment payment is the greater of the total of defaulted investment payments made or treated as made on that day and the value of the subscriptions etc. used to purchase the investment. In relation to a defaulted investment payment made after 8th August 2012, regulation 5DM provides that the value of such a payment (after taking account of defaulted investment subscriptions already made) is the greater of the subscriptions etc. used to purchase the investment and the total of the single defaulted investment payment treated as made on 8th August 2012 and all later defaulted investment payments (including the payment in question).

Regulation 12 amends regulation 7 of the ISARegulations in consequence of the amendment in respect of the definitions of 50% and 75% subsidiary companies in regulation 2 of the ISARegulations made by regulation 5 of these Regulations.

Regulation 13 amends regulation 8 of the ISARegulations (qualifying investments for a cash component) so that the requirement that certain deposit or share account cash ISAs or junior ISAs must not be connected with another such account (as described by the regulation) does not apply if the accounts concerned are ISAs, junior ISAs or Child Trust Fund accounts.

Regulation 14 omits the reference to paragraph (5) of regulation 12 of the ISARegulations in consequence of the omission of that paragraph by regulation 10 of the Individual Savings Account (Amendment) Regulations 2007 (S.I. 2007/2119).

Regulation 15 substitutes regulation 19 of the ISARegulations making provision in respect of the timing and content of the notices given where an account manager intends to cease to be an account manager for the purposes of the ISARegulations or to make a bulk transfer of accounts.

Regulation 16 amends regulation 21 of the ISARegulations so that a further regulation 12 application is unnecessary where an ISA is transferred in a bulk transfer of accounts or is transferred to another ISA already held before the transfer (it is not possible to transfer a stocks and shares ISA to a cash ISA) but in some cases a further regulation 12 application will be required subsequently to permit further subscriptions to the ISA. Consequential amendments are made in respect of the time when information required by regulation 21(6) must be provided to the account manager to whom the transfer is made. Regulation 21(4B)(b) is also updated so that it refers to regulation 4ZA which was inserted by the Individual Savings Account (Amendment No. 2) Regulations 2011 (S.I. 2011/1780).

Regulation 17 amends the information that must be included in the notice required by regulation 21A(2)(b)(ii).

Regulation 18 amends regulation 21B of the ISARegulations so that a further regulation 12A application is unnecessary where a junior ISA account is transferred in a bulk transfer of accounts but will be required subsequently in some cases to permit further subscriptions to it. Consequential amendments are made in respect of the timing and content of information regulation 21B(11) requires to be provided to the account manager to whom the transfer is made.

Regulation 19 amends regulation 29 of the ISARegulations so that an account manager's obligation to retain records under that regulation may also be fulfilled if, following a bulk transfer of accounts between two companies in the same group of companies, the records are retained by the company making the transfer for so long as both companies remain in the same group of companies.

Regulation 20 amends regulation 31 of the ISARegulations in consequence of the amendments made to the ISARegulations by regulation 11 of these Regulations in respect of the returns required from account managers in respect of subscriptions to an account that are defaulted cash account subscriptions.

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