

EXPLANATORY MEMORANDUM TO
THE INSURANCE COMPANIES (“THE LONG-TERM BUSINESS FIXED
CAPITAL”) REGULATIONS 2023

2023 No. 1236

1. Introduction

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

2. Purpose of the instrument

- 2.1 These regulations specify descriptions of assets which are to be regarded for the purposes of section 137 of the Finance Act 2012 as being, or as not being, structural assets of an insurance company’s long-term business.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument exercises the powers conferred by section 137 of the Finance Act 2012. This is the first use of this power.
- 6.2 The legislation covering the taxation of life insurance companies is in Part 2, Finance Act 2012. Section 137 of the Finance Act 2012 sets out the meaning of “long-term business fixed capital”.

7. Policy background

What is being done and why?

- 7.1 Assets held by life insurance companies are generally treated as trading assets. This means any movement in the value of the assets gives rise to trading profits or losses and, in the case of shareholdings, any dividends are taxed as trading income.
- 7.2 Some assets which are held for the purposes of the insurance business form part of the structure of the business so trading treatment is inappropriate. These are referred to as

structural assets. Income and gains from structural assets held for the purposes of a life insurance company's long-term business are excluded from the calculation of trading profits.

7.3 There is currently uncertainty around the meaning of the term "structural asset" in section 137 of Finance Act 2012.

7.4 These regulations will clarify which assets are, and are not, to be treated as structural assets of an insurance company's long-term business.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 Draft regulations were published on gov.uk for consultation from 29 August 2023 to 26 September 2023. The government received one response from an insurance representative body and three responses from taxpayers. Revisions have been made to the draft regulations following the feedback received, in order to deliver the intended effect.

11. Guidance

11.1 HMRC will publish guidance in the Life Assurance Manual available online at <https://www.gov.uk/hmrc-internal-manuals/life-assurance>.

12. Impact

12.1 The impact on business, charities or voluntary bodies is negligible. One-off costs for these businesses will include familiarisation with the new rules. There are not expected to be any continuing costs.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published online at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to keep the instrument under review through ongoing contact with industry representative groups.

14.2 The instrument does not include a statutory review clause. This instrument amends United Kingdom tax legislation and therefore falls within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Hilary Smith at His Majesty's Revenue and Customs, email: financialservicesbai@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Victoria Garton, Deputy Director for Financial Products and Services, at His Majesty's Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Bim Afolami MP, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.