EXPLANATORY MEMORANDUM TO

THE INDIVIDUAL SAVINGS ACCOUNT (AMENDMENT) REGULATIONS 2024

2024 No. 350

1. Introduction

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

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

2. Declaration

2.1 Bim Afolami MP, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Andrew Edwards, Deputy Director for Pensions, Savings and Charities at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kelly Williams at HMRC Telephone: 03000 512336 or email: ipdtechnicalsavingsmail@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Individual Savings Account Regulations 1998 (the ISA Regulations) to bring into effect Autumn Statement announcements, reflect developments in other legislation, clarify the position in cases of doubt and provide additional safeguards for investors.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 An Individual Savings Account (ISA) is a tax-advantaged savings product providing relief from tax to individuals. The Lifetime ISA is a form of ISA in which a government bonus is paid subject to specific circumstances. A Junior ISA is a tax-advantaged savings product available to children. The ISA, Lifetime ISA and Junior ISA rules, including which investments qualify for inclusion, the basis on which accounts must operate and the requirements individuals must meet to open an account, are set out in the ISA Regulations.

5.2 This instrument amends the ISA Regulations to: simplify the ISA regime for ISA managers and investors; accommodate developments in the Overseas Funds Regime; clarify the position with regard to mortgages in the context of Lifetime ISAs; provide additional safeguards for investors; and protect the integrity of the tax-free savings landscape.

What was the previous policy, how is this different?

5.3 At Autumn Statement 2023 it was announced that a number of changes would be made to simplify the ISA regime for investors and ISA managers and extend choice, including removing restrictions on the number of ISAs which can be opened and the inclusion, within an Innovative Finance ISA, of otherwise eligible but limited liquidity funds.

5.4 At Spring Budget 2023 it was announced that ISA manager eligibility would generally be restricted to UK based managers – placing European Economic Area (EEA) based managers in the same position as the rest of the world, where prospective managers must have a UK presence.

5.5 The Lifetime ISA rules require, amongst other things, that a house purchase must be supported by a mortgage but do not refer to "private mortgages". The changes will clarify that a property purchase cannot qualify as a charge free withdrawal where the parties to the mortgage are connected.

5.6 The Overseas Funds Regime (OFR) will provide recognition for authorised overseas collective investment schemes who wish to market to retail investors in the United Kingdom. The existing Regulations do not adequately reflect the forthcoming introduction of the OFR.

5.7 The Regulations currently provide a restricted list of circumstances that would allow HMRC to withdraw approval from an ISA manager. HMRC is aware of approved managers who have never offered ISAs and may be using ISA manager status to legitimise their operations.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 2 of the ISA Regulations defines "recognised Undertakings for Collective Investments in Transferable Securities (UCITS)" and "non-UCITS retail scheme" for ISA purposes.

6.2 This instrument will amend the definition of recognised UCITS and non-UCITS retail scheme in regulation 2 to clarify the position and accommodate the continuing development of FCA policy on overseas collective investment schemes under the Overseas Funds regime.

6.3 Regulation 4 prescribes the general conditions with which an account must comply if it is to qualify for relief from tax, including that an individual may only subscribe to a single ISA of a particular type in any year. It also provides that a transfer or withdrawal of funds and investments must take place within 30 days of instruction unless excepted. Regulation 4ZA specifies the conditions for subscribing to an account, including the annual subscription limit. Regulations 4A and 4B provide that accounts may be “repaired” where two or more accounts of the same type have been subscribed to in a year or where the annual subscription limit has been breached.

6.4 Regulation 5DDB provides that a cash, stocks and shares or innovative finance ISA may operate flexibly allowing the investor to withdraw and replace funds in-year. Regulation 10 specifies the description of individuals who may invest in those ISAs, including that a cash ISA may be opened from age 16. Regulation 12 specifies the conditions for applying to open an ISA, including that an individual must declare that they will not subscribe to another account of the same type in the same year. Regulation 21 specifies the process for transfers of accounts and funds between ISA managers and requires current year subscriptions to be transferred in whole.

6.5 The instrument will amend Regulations 2D, 2G, 4, 4ZA, 4A, 4B, 5DZ, 5DZA, 5DDB, 10, 12 and 21 to permit an individual to subscribe to more than one ISA of the same type in a tax year, remove the restriction on partial transfers of subscriptions made in the current tax year and remove the requirement for an ISA manager to provide information where they have transferred an account to themselves. It will also remove the requirement to make a fresh application where an existing account has not received subscriptions for over a year.

6.6 To simplify the rules for investors and ISA managers account opening for ISA will be harmonised at 18 years. To provide a transitional easement for those who may have undertaken financial planning on the assumption that the benefit would continue, an exception will be made to the Regulations to provide that an investor under 18 with an **existing** cash ISA can continue to enjoy the benefits of the account. The Regulations will also provide that investors aged 16 or 17 as at 6 April 2024 will still be able to open and subscribe to a cash ISA.

6.7 Regulation 8A specifies the kind of investments which may be held in an innovative finance ISA. Investments can either be an Article 36H (‘peer to peer’) arrangement between a borrower and lender or a debenture issued by a company or charity (‘crowdfunding’). Regulation 31 specifies the returns of information which must be made by the ISA manager to HMRC.

6.8 The instrument will amend Regulations 4, 5DDA, 8A and 31 to provide that certain investments which would otherwise qualify for a stocks and shares ISA if it were not for their limited liquidity can qualify for an Innovative Finance ISA.

6.9 Regulation 14 specifies the circumstances in which HMRC may approve a person as an ISA manager. The instrument will amend regulation 14 to remove the provision which allowed authorised European institutions without a UK base to operate via a UK based tax representative.

6.10 Regulations 17 and 17A specify the circumstances in which HMRC may withdraw approval from ISA and Junior ISA managers, including that they no longer qualify. The instrument will amend Regulations 17 and 17A to introduce additional investor protections by allowing HMRC to withdraw ISA manager approval if they have not offered an account within 18 months of being approved.

6.11 The Schedule to the ISA Regulations sets out further provisions relating to Lifetime ISAs. Paragraph 6 sets out the conditions for making a first-time residential purchase such that no withdrawal charge applies, and Paragraph 7 provides definitions for the purposes of Paragraph 6.

6.12 The instrument will amend Paragraph 7 of the Schedule to the ISA Regulations to provide that a first-time residential purchase will not be a qualifying withdrawal from a Lifetime ISA if the purchase is funded by a loan from a person who is connected to the account investor. This removes unregulated arrangements from Lifetime ISA and is consistent with restrictions on connected parties elsewhere in the ISA Regulations and the rules which apply to those whose beliefs preclude the paying of interest, who must fund their purchase through regulated products. The instrument will also remove a number of transitional provisions relating to the introduction of the Lifetime ISA in 2017, which are now obsolete.

6.13 The instrument will also correct an earlier typographical error in regulation 17A.

Why was this approach taken to change the law?

6.14 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Regular discussions take place with industry representatives and ISA managers on the operational design of ISA, potential improvements, and to clarify misapprehensions. These discussions have informed the proposed changes to the design, which will better accommodate the practical operation of ISA. In addition, the draft Regulations have been shared with key industry stakeholders in order to provide advance notice of the precise changes the Regulations will implement.

8. Applicable Guidance

8.1 HMRC's Guidance Notes for ISA managers will be amended to reflect the changes to the ISA rules.[1]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on gov.uk.[2]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. The change to Innovative Finance ISA to encompass certain investments with limited liquidity and the change to the definition of recognised UCITS and non-UCITS retail scheme may benefit ISA managers who chose to engage in these markets. Allowing multiple ISAs of the same type and partial transfers will remove complexity and simplify the ISA regime for ISA managers.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the changes do not affect how businesses interact with HMRC.

[1] ISA managers' guidance: www.gov.uk/government/collections/isa-managers-guidance
[2] Tax Information and Impact Notes: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that HMRC will continue to review compliance with the ISA Regulations using information provided annually and through regular contact with ISA Managers and other groups.

10.2 The instrument does not include a statutory review clause, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, because it amends a provision to vary tax.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument corrects a typographical error in an earlier amendment made by S.I. 2023/264 and, after discussion with the SI Registrar in accordance with Paragraph 4.7.6 of Statutory Instrument Practice, is being issued free of charge to all known recipients of that instrument.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").