EXPLANATORY MEMORANDUM TO THE
PERSONAL EQUITY PLAN (AMENDMENT NO. 2) REGULATIONS 2005

2005 No. 3348

1. This explanatory memorandum has been prepared by H.M. Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 These Regulations amend the Personal Equity Plan Regulations 1989 (S.I. No. 469) to (a) bring in a wider range of collective investment schemes authorised or recognised by the Financial Services Authority; and (b) amend the 5 % cash-like test introduced by the Personal Equity Plan (Amendment) Regulations 2003 (S.I. No. 2748).

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

3.1 None

4. Legislative Background

2.2 Regulations 2 and 6 of the Personal Equity Plans Regulations 1989 SI No. 469 as amended by regulations 3 to 5 of the Personal Equity Plan (Amendment) Regulations 2003 SI 2003 No.2748; and regulation 3 of the Personal Equity Plan (Amendment) Regulations 2004 SI 2004 No. 1676 define which FSA authorised collective investment schemes satisfy the qualifying investment rules for Personal Equity Plan.

2.3 The Personal Equity Plan (Amendment) Regulations 2003 (SI 2003 No.2748) amended the Personal Equity Plans Regulations 1989 (SI No. 469) to apply the "5% test" to collective investment scheme products qualifying within a Personal Equity Plan, and the Personal Equity Plan (Amendment) Regulations 2005 (SI 2005 No 2562) applied the test to investment in securities.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Financial Service Authorities New Collective Investment Schemes Sourcebook, which came into force in March 2004 introduced two types of authorised collective investment scheme for retail investors:

- UCITS schemes; and
- non-UCITS retail scheme.

7.2 Schemes that qualify as a UCITS scheme already qualify within the Personal Equity Plan. These collective investment schemes satisfy the rules prescribed by the European Directive on undertakings for collective investment in transferable securities, which allow schemes to be sold across the European Community.

7.3 The new category of non-UCITS retail scheme covers all other types of retail collective investment schemes authorised by the Financial Services Authority for sale in Great Britain. These non-UCITS retail schemes can include products that:

- are very similar in nature to UCITS schemes or Fund of Fund Schemes, both of which already qualify for the Personal Equity Plan; and
- were previously excluded from the Personal Equity Plan, such as authorised property schemes.

7.4 After discussion with the industry it was agreed that both UCITS and non-UCITS retail schemes should have access to the Personal Equity Plan, provided no greater restrictions were placed on savers rights to access their savings than are used for UCITS schemes. This is to provide equitable treatment across potentially very similar types of retail collective investment scheme.

7.5 These regulations bring all non-UCITS retail schemes in to the Personal Equity Plan provided they do not restrict savers ability to access their funds by more than 2 weeks. This will affect providers aiming to use the Financial Services Authority rules on limited redemption or any amendment or waiver to more general redemption rules.

7.6 In November 2003 we first introduced the "5% test" in to the Personal Equity Plan Regulations to exclude products, set up through a collective investment scheme, from the Personal Equity Plan regime if they provide 'guaranteed' or 'cash-like' returns within the first 5 years of purchase.

7.7 In 2005 this was further extended to direct investment in shares and securities. In extending the test we became aware that as currently drafted it excluded some types of security based investments that it was not intended to affect.

7.8 These regulations disapply the 5% test for securities until, in conjunction with the industry, we can accurately limit the test to those schemes it was intended to affect. They also simplify the wording of the test to provide financial institutions with greater clarity on when and how the test should be applied

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

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