

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

$$£150(Pe) - £50(E) = £100$$

Part 4: Employment income: exemptions

Chapter 1: Exemptions: general

Section 227: Scope of Part 4

911. This section introduces Part 4, setting out the effect of the exemptions within it. It is new.
912. *Subsections (2) and (3)* explain that there are two different kinds of exemption. An “earnings-only exemption” is an exemption that removes either any charge to tax under Part 2 as general earnings or a particular charge to tax as general earnings, for example, by removing a charge under a particular chapter of the benefits code.
913. An “employment income” exemption removes *any* charge to tax under Part 2.
914. There is considerable variety in the forms of words used to express exemptions in ICTA. However, not all the differences in wording signify an actual difference in the effect. Close examination of the various exemption provisions in ICTA shows that an exemption can only affect a possible charge to tax under Schedule E in three ways:
- it can remove a single type of charge; eg section 155(1A) of ICTA says
((1A) Section 154 does not apply to a benefit consisting in the provision for the employee of a car parking space at or near his place of work.
 - it can remove any charge as “emoluments” (rewritten in this Act as “general earnings”); eg section 200B(2) (work-related training provided by employers) says
((2) Subject to section 200C, the emoluments of the employee from the office or employment shall not be taken to include....
 - it can remove any charge to tax under Schedule E, eg section 197AD(1) of ICTA says
(1) There is no charge to tax under Schedule E in respect of approved mileage allowance payments for a qualifying vehicle.
915. In this Act the effects described in the first two bullets only impact on general earnings, and exemptions which have those effects are described as “earnings-only” exemptions.

The type of exemption that, in ICTA, removes any charge to tax under Schedule E is labelled an “employment income” exemption in this Act.

916. If a benefit is received in circumstances to which Chapter 3 of Part 6 (payments and benefits on termination of employment etc) could apply, any “earnings-only” exemptions are ignored in deciding whether or not the benefit is within that Chapter.
917. But if the benefit or income is the subject of an “employment income” exemption, there is no possibility of any charge to tax on that benefit or income under Chapter 3 of Part 6, nor under any other provision in this Act.
918. There are also some exemptions that have a wider effect and remove the possibility of any charge to tax at all. These are described in section 228(2).

Section 228: Effect of exemptions on liability under provisions outside Part 2

919. All of the exemptions in this Part operate to remove a charge to tax under Part 2 of this Act. *Subsection (1)* sets out the proposition that, in general, this is the only kind of charge to tax that these exemptions affect.
920. However, Part 4 includes a number of exemptions that have a wider effect. There are various phrases used in the exemption provisions in ICTA which make it clear that they operate to remove *any* charge to income tax. Examples are:
- ...shall not be regarded as income for any purpose of the Income Tax Acts – section 200(1) (expenses of Members of Parliament)
- ...shall be exempt from income tax – section 322(2) (consular officers and employees)
921. Some of the exemptions set out in ESCs are also worded so that they remove any charge to income tax on the income in question. Examples are:-
- Income tax is not charged on.... – ESC A6 (Miners: free coal and allowances in lieu)
- ...the employee will not be charged to income tax..... – ESC A66 (Payments for employees’ journeys home: late night travel and breakdown in car-sharing arrangements).
922. *Subsection (2)* includes a list of all the exemptions in Part 4 that have this wider application and provides that they have effect to remove any charge to income tax.
923. The move to a common formulation, “no liability to income tax arises”, for all exemptions, including those listed in section 228(2), is explained in detail in *Note 28* in Annex 2.

Chapter 2: Exemptions: mileage allowances and passenger payments

Overview

924. This Chapter rewrites the provisions for the exemption from tax as earnings of mileage allowance payments and passenger payments. Section 57 of FA 2001 introduced those provisions, which are effective from 2002-03 onwards. The Chapter also rewrites the provisions relating to mileage allowance relief that section 57 introduced. Given that those latter provisions mean that employees can get a deduction from their earnings if their circumstances permit, it might be thought that they should more properly appear among the travel-related expenses in Chapter 2 of Part 5 of this Act. The provisions for mileage allowance relief appear in this Chapter for the following reasons:
- The relief provided does not depend upon the employees having incurred any expenditure. It ensures that the employees receive the maximum relief that is approved for mileage allowance payments against their earnings, even if the mileage allowance payments made by the employer are less than that maximum

amount. For that reason the relief would not sit comfortably in Chapter 2 of Part 5 of this Act, which is headed “Deductions for employee’s expenses”; and

- Keeping the payments and relief provisions together means that the terms or labels for these related provisions only have to be defined once. That has resulted in a considerable saving of length and a compactness of presentation.

925. The provisions that, by virtue of Part 1 of Schedule 12 to FA 2001, were introduced as Schedule 12AA to ICTA have been incorporated in the rewritten sections. That accords with the policy of avoiding the use of schedules, if possible.
926. The consequential amendments in Part 2 of Schedule 12 to FA 2001 have been incorporated into the rewritten sections as relevant.

Section 229: Mileage allowance payments

927. This section sets out the basic availability of the exemption for approved mileage allowance payments. The section derives from section 197AD of ICTA.
928. *Subsection (1)* has a reordered wording compared with the source legislation. When terms or labels first appear in this and subsequent subsections signposts to where they are defined accompany them.
929. *Subsection (2)* explains what are mileage allowance payments, in the process excluding passenger payments from them.
930. *Subsection (3)* explains what are approved mileage allowance payments.
931. *Subsection (4)* gives details of two circumstances in which the exemption does not apply.

Section 230: The approved amount for mileage allowance payments

932. This section gives details of the approved amount for mileage allowance payments. The several ideas contained in paragraph 4(2) of Schedule 12AA to ICTA now appear in separate subsections. The section derives from paragraph 4 of Schedule 12AA.
933. *Subsection (1)* gives a formula to calculate the approved amount for mileage allowance payments for a given type of vehicle.
934. In *subsection (2)* the mileage rate information has been converted to tabular form.
935. *Subsection (3)* qualifies what is meant by the expression “the first 10,000 miles” in subsection (2), dealing particularly with the possibility that the same person might undertake business travel in respect of two or more associated employments.
936. *Subsection (4)* gives details of when one employment is associated with another.
937. In *subsection (5)* the reference to the definition of “control” is now direct, rather than diverting the user to section 168(12) of ICTA, only to find that that in turn refers to section 840 of ICTA.
938. *Subsection (6)* provides the Treasury with powers to make regulations to alter the rates or rate bands in subsection (2).

Section 231: Mileage allowance relief

939. This section explains what mileage allowance relief is and how the employee may be entitled to it. The section derives from section 197AF of ICTA.
940. *Subsection (1)* describes the circumstances in which entitlement to mileage allowance relief can arise.

941. *Subsection (2)* states how to calculate the amount of mileage allowance relief to which the employee is entitled.
942. *Subsection (3)* gives details of two circumstances in which mileage allowance relief is not available.

Section 232: Giving effect to mileage allowance relief

943. This section deals with the mechanics of giving effect to mileage allowance relief. The main difference between it and the source legislation is the absence of any reference to the Cases of Schedule E. The consequences of this are most evident in *subsections (2)* and *(3)*. The section derives from section 197AG of ICTA.
944. *Subsection (1)* relates the deduction to a tax year.
945. *Subsection (2)* corresponds with the references to Cases I and II of Schedule E in section 197AG(2).
946. *Subsection (3)* corresponds with the references to Case III of Schedule E in section 197AG(3).
947. *Subsection (4)* contains some assumptions supplementary to the operation of subsection (3).
948. *Subsection (5)* gives an order of precedence as between deductions available under subsections (2) and (3).
949. *Subsection (6)* prevents a double deduction.
950. *Subsection (7)* defines two terms used in this section by reference to provisions in another Part of this Act.

Section 233: Passenger payments

951. This section sets out the basic availability of the exemption for passenger payments. The section derives from section 197AE of ICTA.
952. *Subsection (1)* gives details of the circumstances in which the exemption for passenger payments is available.
953. *Subsection (2)* qualifies part of the provisions in subsection (1).
954. *Subsection (3)* explains what are passenger payments.
955. *Subsection (4)* explains what are approved passenger payments.
956. *Subsection (5)* supplies additional information in relation to subsection (2).

Section 234: The approved amount for passenger payments

957. This section gives details of the approved amount for passenger payments. The section derives from paragraph 5 of Schedule 12AA to ICTA.
958. *Subsection (1)* gives a formula to calculate the approved amount for passenger payments.
959. *Subsection (2)* explains how the calculation is affected if there are times in the tax year when two or more passengers for whom the employee is entitled to passenger payments are carried concurrently.
960. *Subsection (3)* provides the Treasury with powers to make regulations to alter the rate in subsection (1).

Section 235: Vehicles to which this Chapter applies

961. This section defines the vehicles to which this Chapter applies. The section derives from paragraph 3 of Schedule 12AA to ICTA.
962. *Subsection (1)* simply names the types of vehicle within the Chapter.
963. *Subsections (4)* and *(5)* contain definitions of the meanings of “motor cycle” and “cycle” that refer to the Road Traffic Act 1988. When this Act was published as a draft Bill for consultation it included an expanded version of this section in which those definitions were reproduced in full. If either of the Road Traffic Act 1988 definitions were to change then, assuming the policy is to keep the definitions aligned, an amendment to the rewritten legislation would be required to maintain that alignment. That would have to be done by way of primary legislation, for which it might be difficult to find parliamentary time. That is an undesirable side effect of the expanded definitions. The Act therefore reverts to definitions that refer to the Road Traffic Act 1988.
964. As at February 2003, the definition of “motor cycle” in section 185(1) of the Road Traffic Act 1988 is as follows:
- “motor cycle” means a mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kilograms;
965. and the definition of “cycle” in section 192 of that Act is as follows:
- “cycle” means a bicycle, a tricycle or a cycle having four or more wheels, not being in any case a motor vehicle.
966. *Subsection (6)* contains some additional definitions of terms used in subsection (3).

Section 236: Interpretation of this Chapter

967. This section contains additional information needed to interpret the provisions in this Chapter. The presentation of this material varies slightly from the source legislation to make it easier to use. The section derives from parts of paragraph 1 and paragraphs 2 and 6 of Schedule 12AA to ICTA.
968. *Subsection (1)* gives signposts to three definitions used in this Chapter.
969. *Subsection (2)* defines what is a “company vehicle” by reference to other provisions in this Act.
970. *Subsection (3)* gives signposts to the provisions that define what is meant by when cars and vans are made available for private use and when they are made available by reason of the employment.

Chapter 3: Exemptions: other transport, travel and subsistence

Section 237: Parking provision and expenses

971. This section derives from the provisions in sections 197A and 155(1A) of ICTA, which provide an exemption from tax in respect of the provision of car parking, and the equivalent provisions for motor cycle parking and facilities for parking bicycles in section 49(2) of FA 1999. It only applies to parking places at the place of work. In this section the defined expression “workplace” has been used instead of “place of work”. See *Note 29* in Annex 2.
972. There are definitions of “motor cycle” and “cycle” in section 49(3) of FA 1999. But there is no definition of “car” in sections 155(1A) or 197A of ICTA. As the subject of the exemption is a parking space, definitions of what might be put in it did not appear to add anything, so they have not been reproduced here.

Section 238: Modest private use of heavy goods vehicles

973. This section derives from section 159AC of ICTA which prevents a benefit being chargeable where there is modest private use of a heavy goods vehicle. The exemption here goes wider and provides for no liability to income tax however that liability may arise. See *Change 41* in Annex 1.
974. The exemptions in section 159AC(2)(b), (3)(a) and (3)(c) of ICTA, dealing with expenses in connection with the vehicle, are dealt with in section 239.

Section 239: Payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles

975. When an employee is chargeable to tax under the provisions in Chapter 6 of Part 3 in respect of a car or van that charge is intended to cover all the expenses in connection with the vehicle, other than the provision of a driver and, in relation to a car, of fuel. *Subsections (1), (2) and (4)* of this section provide various exemptions from tax. They derive from sections 157(3) and 159AA(3) of ICTA. *Subsection (3)* preserves the charge for car fuel.
976. If a heavy goods vehicle, which is not used wholly or mainly for private use, is exempted from the Chapter 6 of Part 3 charge by section 238 it is also exempt in respect of expenses connected with it. This rule derives from section 159AC(3) of ICTA.
977. As exemptions for all types of vehicle are expressed in the same terms in ICTA, they have been brought together in this section as a single exemption. Furthermore, the exemptions have been widened so that they now apply however the liability may arise. See *Change 42* in Annex 1. The use of “taxable” car or van, and “exempt” heavy goods vehicle are labels to assist in identifying the basis on which the exemption is due.
978. In the source legislation, the exemption for the discharge of liability and certain expense payments in connection with an exempt heavy goods vehicle only applies in a case where there would otherwise have been a charge to tax under Chapter II of Part V of ICTA – applicable only to employees earning £8,500 or more and directors. In *subsection (8)*, the exemption has been extended to employees in “excluded employment”. See *Change 43* in Annex 1.

Section 240: Incidental overnight expenses and benefits

979. This section sets out the exemption for incidental overnight expenses. In so far as it relates to earnings and as expenses it derives from section 200A of ICTA. The exemption from a charge to tax under the benefits code derives from section 155(1B) of ICTA.
980. In the source legislation, sums paid by way of incidental overnight expenses are not eligible for the exemption in if the employee is already allowed a deduction under one of the provisions listed in section 200A(1)(b) of ICTA. That list includes all the provisions under which a deduction may be available. However, the approach in ICTA of listing all the references is long-winded and not necessarily easy to follow. It is simpler to say in *subsections (1)(c) and (2)(b)* “would not be deductible under Part 5”. This substitution of a general reference is analysed in *Change 44* in Annex 1.
981. In *subsection (1)(b)* a new label of “the overnight stay conditions” has been used to describe the conditions which have to be satisfied in identifying a “qualifying period”. Those conditions are explained in *subsection (4)*.
982. *Subsection (2)* exempts the charge on benefits under Chapter 10 of Part 3 where relief for the cost of the benefit could not be obtained under section 365, if the employee had paid for it. *Subsection (2)* derives from section 155(1B) of ICTA.

983. In setting out the condition about deductibility of travelling costs, section 200A(3)(b)(i) of ICTA contains a list of deduction provisions which are regarded as satisfying the test. In line with the simplification above, *subsection (5)* replaces this list and instead refers to expenses “deductible under Part 5 (otherwise than under any of the excepted foreign travel provisions)”. The “excepted foreign travel provisions” are listed in *subsection (7)*.

Section 241: Incidental overnight expenses and benefits: overall exemption limit

984. The exemption for incidental overnight expenses in section 240 is a limited exemption. This section sets out the limit on the exemption and how it is applied and mainly derives from section 200A(2), (4) and (5) of ICTA. The cap on the exemption applies to the sum of the expenses and benefits exempted under section 240 and the amount exempted for non-cash vouchers and credit-tokens under section 268. The label “the exemption provisions total” in *subsection (2)* is used to refer to the aggregate total eligible for exemption under both of these sections.
985. *Subsection (3)* sets out “the permitted amount” for each qualifying period. The “permitted amount” is a new label for the amount described as the “authorised maximum” in section 200A(4) of ICTA.

Section 242: Works transport services

986. This section rewrites most of section 197AA of ICTA as extended by section 60 of FA 2001. That provision excludes from the charge to tax under section 154 the benefit arising from the provision of a works bus or minibus service for employees. This section goes wider and provides for no liability to income tax. See *Change 45* in Annex 1.
987. The definitions of “qualifying journey” and “workplace” in section 197AA(3) and (7) have been taken to a new interpretative section, section 249, which applies to the whole Chapter. The definition of “qualifying journey” reflects the amendment to section 197AB of ICTA (support for public transport bus services) made by section 33 of FA 2002. It will enable bus and minibus journeys which start or end at pick-up points to qualify.
988. The only part of section 197AA of ICTA that has not been rewritten in this section is subsection (6). This deals with the exemption from the charge to tax under section 141 of ICTA (non-cash vouchers) where the employee is given a non-cash voucher to evidence entitlement to use the works transport service. That exemption is covered in section 266.

Section 243: Support for public bus services

989. This section derives from section 197AB of ICTA. That section excludes from the charge under section 154 the benefit arising from any financial or other support provided by one or more employers for a public bus service that their employees use for journeys to and from the workplace, or between workplaces. The section takes into account the amendments made by section 33 of FA 2002. Certain definitions are now in section 249. In providing for no liability to income tax the exemption in ICTA has been widened in the same way as in section 242. See *Change 46* in Annex 1.

Section 244: Cycles and cyclist’s safety equipment

990. This section derives from section 197AC of ICTA. This prevents an employee being chargeable to income tax under section 154 in respect of the provision of a cycle or associated safety equipment. The part of section 197AC dealing with the provision of a voucher entitling the employee to use a cycle or safety equipment is covered in section 266.
991. The exception only applies where the employer provides the cycle or safety equipment for the employee’s use rather than transferring it to him. If the cycle or equipment is

given to the employee to keep, the benefit arising is still chargeable to tax in the normal way.

- 992. The definition of “qualifying journey” in section 197AB(4) of ICTA has been taken to a new interpretative section, section 249, and in doing so has been extended by adopting the amendment to section 197AB made by section 33 of FA 2002.
- 993. Section 197AC(6) of ICTA includes an interpretation of “employment”. This has not been rewritten because the extension of the term to include “offices” is dealt with in section 5.

Section 245: Travelling and subsistence during public transport strikes

- 994. This section derives from ESC A58. It exempts payments and benefits in respect of travelling and subsistence when there is a disruption in public transport. Legislating the concession is a minor change to the law. See *Change 47* in Annex 1.
- 995. In the normal way when the employer pays the cost of, or provides transport for, “ordinary commuting” it would in most cases be chargeable to tax and no deduction would be allowed. Nor would deductions be allowed for accommodation and subsistence paid for or provided near to the permanent workplace. This section provides an exemption for payments and benefits provided to employees to ensure they are able to get to work when there is a public transport strike.
- 996. If the employee is working at a temporary workplace, or on a training course, the provision of transport, accommodation and subsistence is not exempt, but a deduction is allowed under Part 5.

Section 246: Transport between work and home for disabled employees: general

- 997. This and the following section derive from ESC A59 and some practice as published in the Inland Revenue guidance manuals. Legislating the concession is a minor change to the law. See *Change 48* in Annex 1.
- 998. The section provides a complete exemption from income tax where an employer provides help with home to work commuting for a disabled employee, except where a car is provided. No special mention of travelling to training is necessary because such travelling (except where it is in substance “ordinary commuting” eg when the training is held at the normal workplace) is exempt for everyone. Where that example involves a disabled employee this section provides an exemption.

Section 247: Provision of cars for disabled employees

- 999. This section also derives from ESC A59 and established Inland Revenue practice and concerns cases where a car is provided for a disabled employee. Legislating the concession and practice is a minor change to the law. See *Change 48* in Annex 1.

Section 248: Transport home: late night working and failure of car-sharing arrangements

- 1000. This section derives from ESC A66. It grants an exemption from income tax in the cases of exceptional late night working and the failure of car-sharing arrangements. Legislating the concession is a minor change to the law. See *Change 49* in Annex 1.
- 1001. The concession is limited to 60 occasions overall in the tax year. For each occasion after the sixtieth there is liability in the normal way.
- 1002. The journeys concerned are from work to home only. The term “ordinary commuting” cannot be used as this would include journeys from home to work.
- 1003. The conditions for the exemption require judgements about when it is “not...reasonable to expect” an employee to use public transport – subsection (2)(c)(ii), and what are

“unforeseen and exceptional circumstances” in subsection (3)(b). It is not possible to define these questions of judgement further.

Section 249: Interpretation of this Chapter

1004. This section brings together definitions which apply to several provisions in this Chapter. The definition of “qualifying journey” has been extended by the addition of the words “the whole or part of” as made by section 33 of FA 2002 in relation to section 197AB of ICTA (support for public transport bus services). Adopting this extended definition in sections 242 and 244 is a minor change to the law. See *Change 50* in Annex 1.

Chapter 4: Exemptions: education and training

Overview

1005. This Chapter contains exemptions from income tax on the provision of education and training for an employee by employers and third parties. It derives from sections 200B to 200D of ICTA (work-related training provided by employers etc), and from sections 200E to 200J of ICTA (education and training funded by employers etc).
1006. The sections first describe the provision and costs to which they apply. They then define the type of training or education with which they are concerned. Finally, they set out circumstances in which exemption from tax does not apply.

Section 250: Exemption of work-related training provision

1007. This section provides there is no liability to income tax on the provision of work-related training for an employee by the employer or by a person other than the employer.
1008. It derives from sections 200B (expenditure by the employer) and 200D (expenditure by a third party) of ICTA.
1009. Although it is possible for an employee to be exempt from tax under both section 250 and section 311 (retraining courses), it is not necessary (as in section 200C(4) of ICTA) to exclude provision exempted elsewhere, as exemption can be given under either. See *Note 30* in Annex 2.
1010. *Subsection (1)* sets out the exemption. It covers both the provision and the payment or reimbursement of the cost of provision of the training (and any benefit incidental to the training) plus specified related costs.
1011. To accord with Inland Revenue practice, the exemption is expressed to cover training and training costs, whether provided or incurred by the employer or by a third party. See *Change 52* in Annex 1.
1012. The exemption is so expressed that no charge arises under Part 2, whether as general earnings or specific employment income, on the provision and costs of work-related training. This reflects Inland Revenue practice not to apply any employment income charge which might arguably apply (say, a specific employment income charge, such as Chapter 3 of Part 6 where the training relates to a change of duties). See *Change 51* in Annex 1.
1013. *Subsection (2)* specifies the ancillary costs within subsection (1)(b)(ii) to which the exemption applies. See *Change 53* in Annex 1.

Section 251: Meaning of “work-related training”

1014. This section defines “work-related training” for the purposes of the exemption. It derives from section 200B of ICTA.

1015. The definition covers both the objectives of the training and the employment (or related employment) to which the benefit of that training must be relevant.

Section 252: Exception for non-deductible travel expenses

1016. This section deals with travel and subsistence to which the exemption does not apply. It derives from section 200C of ICTA.
1017. *Subsection (1)* sets out the conditions to be satisfied if travel and subsistence are not to be excepted from the exemption. Travel must meet condition A or B; subsistence must meet condition B.
1018. The section dispenses with a requirement that the expenses are incurred wholly, exclusively and necessarily in undertaking the training. Instead, as a result of cross-reference to other provisions in this Part and in Part 5, it simply requires amounts to be necessarily expended on travelling or subsistence. This accords with Inland Revenue practice and aligns the rules relating to travel and subsistence expenses in this section with those in sections 310 and 311 in Chapter 10 of this Part (exemptions: termination of employment). See *Change 53* in Annex 1.
1019. *Subsections (2) and (3)* set out conditions A and B respectively.
1020. Travel and subsistence expenses meeting condition B include expenses that, on the assumptions in subsection (4), would be deductible under any provision of Part 5. Under ICTA, expenses within the exemption are restricted to expenses deductible only under selected sections of those rewritten in that Part. See *Change 54* in Annex 1.
1021. This section is listed in section 332 (meaning of “the deductibility provisions”). Various provisions in Part 5 then ensure that certain rules in Part 5 do not adversely restrict expenses, deductible under that Part, for the purposes of condition B.
1022. *Subsection (4)* sets out the assumptions to be made for the purposes of subsections (2) and (3).
1023. *Subsection (5)* provides definitions for the purposes of the section.

Section 253: Exception where provision for excluded purposes

1024. This section deals with provision to which the exemption does not apply. It derives from section 200C of ICTA.
1025. *Subsection (1)* disapplies the exemption to provision for excluded purposes.
1026. Relief under section 32 Finance Act 1991 (vocational training) was repealed by Finance Act 1999, with effect from 1 September 2000 ([SI 2000 No 2004](#), Finance Act 1999, section 59(3)(b), (Appointed Day) Order). As the exclusion from the exemption of amounts eligible for vocational training relief is obsolete, this Act does not rewrite section 200C(5) of ICTA.
1027. *Subsections (2) to (4)* list and define the excluded purposes.

Section 254: Exception where unrelated assets are provided

1028. This section excepts provision of assets from the exemption, where the assets are not training-related. It derives from section 200C of ICTA.
1029. *Subsections (2) and (3)* define “training-related asset” and “training materials”.
1030. The definition of “training materials” consists of an illustrative, rather than exhaustive, list to cater for future development in the means of delivering training without having to amend the list. See *Note 31* in Annex 2.

Section 255: Exemption for contributions to individual learning account training

1031. This section provides there is no liability to income tax, from a current or former employment, on the provision of, and payment or reimbursement of the costs of, individual learning account training given by a person other than the trainee's employer (or former employer).
1032. It derives from sections 200E (education and training funded by employers) and 200J (education and training funded by third parties) of ICTA.
1033. Although an employee may be exempt from tax under section 255 and either or both of sections 250 (work-related training) and 311 (retraining courses), provision exempted elsewhere need not be excluded (as in section 200H of ICTA), because exemption can be given under any of these. This Act does not therefore rewrite section 200H. See *Note 30* in Annex 2.
1034. *Subsection (1)* sets out the exemption, which covers the provision of training by a training provider, funding of that training, incidental benefits of training and specified other costs paid or reimbursed.
1035. To accord with Inland Revenue practice, the exemption is expressed to cover the provision, funding and benefit of individual learning account training, whether funded or provided by the employer (or former employer) or a third party. See *Change 52* in Annex 1.
1036. The exemption is so expressed that no charge arises under Part 2, whether as general earnings or specific employment income, on the funding and provision of individual learning account training. As with work-related training (section 250), it is Inland Revenue practice not to apply any employment income charge which might arguably apply. See *Change 55* in Annex 1.
1037. *Subsection (2)* defines the trainees eligible for the exemption as account holders under the Learning and Skills Act 2000 and parties to arrangements under the Education and Training (Scotland) Act 2000.
1038. *Subsection (3)* specifies the ancillary costs within subsection (1)(d) to which the exemption applies. See *Change 53* in Annex 1.

Section 256: Meaning of "individual learning account training"

1039. This section defines "individual learning account training" for the purposes of the exemption by reference to the Learning and Skills Act 2000 and the Education and Training (Scotland) Act 2000.
1040. It derives from section 200E of ICTA.

Section 257: Exception for non-deductible travel expenses

1041. This section deals with travel and subsistence to which the exemption does not apply. It derives from section 200F of ICTA.
1042. *Subsection (1)* sets out the conditions to be satisfied if travel and subsistence are not to be excepted from the exemption. Travel must meet condition A or B; subsistence must meet condition B.
1043. The section dispenses with a requirement that the expenses are incurred wholly, exclusively and necessarily in undertaking the training. Instead, as a result of cross-reference to other provisions in this Part and in Part 5, it simply requires amounts to be necessarily expended on travelling or subsistence. This accords with Inland Revenue practice and aligns the rules relating to travel and subsistence expenses in this section with those in sections 310 and 311 in Chapter 10 of this Part (exemptions: termination of employment). See *Change 53* in Annex 1.

1044. *Subsections (2) and (3)* set out conditions A and B respectively.
1045. Travel and subsistence expenses meeting condition B include expenses that, on the assumptions in subsection (4), would be deductible under any provision of Part 5. Under ICTA, expenses within the exemption are restricted to expenses deductible only under selected sections of those rewritten in that Part. See *Change 54* in Annex 1.
1046. This section is listed in section 332 (meaning of “the deductibility provisions”). Various provisions in Part 5 then ensure that certain rules in Part 5 do not adversely restrict expenses, deductible under that Part, for the purposes of condition B.
1047. *Subsection (4)* sets out the assumptions to be made for the purposes of subsections (2) and (3).
1048. *Subsection (5)* provides definitions for the purposes of the section.

Section 258: Exception where provision for excluded purposes

1049. This section deals with provision to which the exemption does not apply. It derives from section 200F of ICTA.
1050. *Subsection (1)* disapplies the exemption to provision for excluded purposes.
1051. *Subsections (2) and (3)* list and define the excluded purposes.

Section 259: Exception where unrelated assets are provided

1052. This section excepts provision of assets that are not training-related from the exemption. It derives from section 200F of ICTA.
1053. *Subsections (2) and (3)* define “training-related asset” and “training materials” similarly to section 254(2) and (3).
1054. The definition of “training materials” again consists of an illustrative, rather than exhaustive, list to cater for future development in means of delivering training without having to amend the list. See *Note 31* in Annex 2.

Section 260: Exception where training not generally available to staff

1055. This section sets out the requirement that individual learning account training be generally available to an employer’s staff or former staff. It derives from section 200G of ICTA.
1056. *Subsection (1)* limits the exemption to funding and other costs incurred under “existing arrangements” which cover the making of contributions to such funding and other costs of individual learning account training for employees generally.
1057. The section extends contributions made to “existing arrangements” to contributions made by a third party as well as an employer (or former employer).
1058. *Subsection (2)* defines “existing arrangements” so as to link the making of contributions to arrangements in place at the time the contributions are made, whether by the employer (or former employer) or by a third party. See *Note 32* in Annex 2.
1059. *Subsections (3) to (5)* authorise the Treasury to make regulations to determine the employer of Crown servants for the purposes of this section.

Chapter 5: Exemptions: recreational benefits

Recreational facilities

1060. The first three sections in this Chapter deal with the exemption where an employer provides certain sporting or recreational facilities for employees. These sections derive

from section 197G of ICTA. The final two sections cover annual parties and functions and third party entertainment, the first deriving from an ESC and the second from section 155(7) of ICTA.

1061. The material in section 197G of ICTA has been reordered. The first section sets out the benefits to which the exemption applies, and the conditions that must be met for the exemption to apply to those benefits and the second the benefits to which the exemption does not apply. The third section notes how Treasury powers can apply or not apply to these rules.
1062. In these three sections “facilities” in the plural has replaced “facility”, used in section 197G(3)(c) to (f) and in the opening words to and in section 197G(4)(b) of ICTA, to denote that it is the tangible facilities which are meant and not the opportunity to use them.

Section 261: Exemption of recreational benefits

1063. *Subsection (1)* provides for the exemption from income tax. *Subsection (2)* makes it clear that both the use of the facilities and the right or opportunity to use them are within the exemption. The availability and use of the facilities must meet the conditions set out in *subsections (3) to (5)* for the benefit to be exempt.
1064. The simplest case where this exemption can apply is that of a single employer. If all the conditions in *subsections (3) to (5)* are met, the exemption applies. In that case “the employer in question”, (*subsection (3)*), is the single employer.
1065. Two or more employers may provide facilities jointly. In such a case each employer is looked at separately. The condition in *subsection (3)* requires that the facilities must be available generally to the employees of that employer, the “employer in question”. If one employer restricts the availability to certain employees, none of the employees of *that* employer can claim the exemption.
1066. The use of the words “members of the public generally” in *subsection (4)*, is to indicate that the exemption cannot apply to facilities available for public use, whether these are public facilities or in-house facilities made available to the “public generally”. However, in-house facilities made available for use to a particular sector of “the public”, meaning people other than employees, such as a local school allowed to have swimming lessons, does not prevent the exemption from applying, provided the condition in *subsection (5)* is met.
1067. The test at *subsection (5)* looks at actual use of the facilities rather than the people to whom they are made available. There are several different things taken into account here. To simplify this, *subsection (5)* uses the expression “employment-related” and *subsection (6)* then defines what that means.
1068. Under *subsections (6) and (7)*, use by former employees and their families is included, provided the employer has made the facilities available generally to the employees.
1069. The words in brackets in *subsection (5)* indicate that where there is provision for the employees of more than one employer, all users must be considered. If an employer has restricted use, so that the test at *subsection (5)* fails for that employer, it does not prevent the use test being satisfied for other employers. Provided the restricting employer has only small numbers actually using the facilities, the “mainly” test is satisfied. This can best be explained using an example.
1070. Example. Suppose a facility is:
- available to a few of A’s employees; and
 - available to all of B’s employees; but
 - not available to the public generally.

The exemption does not apply to A's employees because the condition in subsection (3) is not satisfied. Subsection (3) is satisfied for B's employees.

The opportunity to use the facilities may be employment-related for B's employees but not for A's. If B's employees who use the facilities substantially outnumber the employees of A, who use them, they will be used mainly by employees whose opportunity to use them is employment-related. The condition in subsection (5) is then satisfied for B's employees, and the exemption will apply for them.

1071. An employer may provide a non-cash voucher, which the employee must present to use the facilities provided. If the facilities meet the conditions set out, and the voucher can only be used for that purpose, section 266(3) provides that there is no liability to income tax on the cost of provision of the voucher.

Section 262: Benefits not exempted by section 261

1072. *Subsection (1)* sets out the benefits that are not within the exemption and *subsection (2)* explains some of the terms in subsection (1).

Section 263: Power to alter benefits to which section 261 applies

1073. This section gives the Treasury the power to limit or extend the scope of the exemption. The administrative procedure is contained in section 828(3) of ICTA.

Section 264: Annual parties and functions

1074. This section derives from, and gives statutory effect to, ESC A70B (Staff Christmas parties). That concession operates to exempt the employee from any income tax liability on specified office parties. See *Change 56* in Annex 1. The section covers office-holders as well as employees although the concession does not expressly do so. See section 5(2).
1075. Although the heading to the concession is "Staff Christmas Parties", the extension of the original concession to other parties indicates that it refers to annual functions in general. This is reflected in the less specific heading to this section: "Annual parties and functions".
1076. *Subsection (1)* provides that the section applies to functions available to employees generally. In accordance with how the ESC was understood, it is made clear that there is scope for parties to be held in different locations.
1077. *Subsections (2) to (5)* show how the monetary limit is applied. *Subsection (4)(b)*, read together with the whole section, makes it clear that the exemption effectively applies to persons attending as guests of the employees.
1078. When an ESC contains monetary limits, changes in those limits are made by press release or by republishing the ESC with different amounts. This is not possible for legislation. There are a number of exemptions in current legislation for which the Treasury fixes an amount. This Act adopts the same approach for rewritten concessions and includes a general power for the Treasury to increase the amounts in section 716. This provision is listed there.
1079. The equivalent exemption for the provision by way of a non-cash voucher (for example, a ticket for entry to a function is a voucher) is included in section 266(3) rather than within this section.

Section 265: Third party entertainment

1080. This section derives from the exemption in section 155(7) of ICTA. If the provision of the benefit in this case is "by reason of the employment" it would be within the terms of section 201 without the exemption in *subsection (1)*.

1081. The conditions in *subsections (2) to (5)* make it clear that the reason for the entertainment must be gratuitous, and not in any way a reward for past or future services, nor from anyone connected with the employer. If these conditions are not met, there is no exemption.
1082. The exemption is expressed as there being “no liability to income tax”. This is wider than section 155(7) of ICTA which is expressed as an exemption from section 154 of ICTA, the general charging provision for benefits in kind. See *Change 57* in Annex 1.
1083. If the provision of the entertainment is by way of a non-cash voucher or a credit-token, there are corresponding exemptions in sections 266 and 267. In ICTA these exemptions are in sections 141(6B) and 142(3B).

Chapter 6: Exemptions: Non-cash vouchers and credit-tokens

Overview

1084. This Chapter provides exemptions which apply to non-cash vouchers and credit-tokens. Anything provided by way of a non-cash voucher or credit-token which is not in the exemptions provided by this Chapter remains chargeable, even if it would be exempt where provided direct. Bringing these exemptions together is a change in approach.
1085. The derivations of the exemptions in this Chapter are those given for the exemptions applying to equivalent direct provision.
1086. The different wording used in each section and subsection in this Chapter reflects the different ways in which vouchers and credit-tokens may be used and the circumstances in which the exemption will apply.

Section 266: Exemption of non-cash vouchers for exempt benefits

1087. *Subsection (1)* derives from sections 141(6A), and (6B) and 197A of ICTA, section 49(1) of FA 1999, and ESCs A59 and A66. All these exemptions apply to non-cash vouchers to the extent that they are used to obtain the exempt item. The inclusion of the exemptions provided by the ESCs is a minor change to the law. See *Changes 48 and 49* in Annex 1.
1088. *Subsection (2)* derives from sections 197AA, 197AB(5) and 197AC(5) of ICTA. In each of these provisions the voucher is not handed over, but is used as evidence of entitlement.
1089. *Subsection (3)* derives from sections 197(2) and 197G(1) of ICTA and ESCs A58, A70B and A74. For each of these the voucher is used only for the exempt purpose. The inclusion of the exemptions provided by the ESCs is a minor change to the law. See *Changes 47, 56 and 58* in Annex 1.
1090. *Subsection (4)* provides the voucher exemption in respect of something exempted by use of the regulations in respect of minor benefits.
1091. *Subsection (5)* ensures that exemptions under this section apply even if the employee is in lower-paid employment. Unlike other benefits charges, chargeability for non-cash vouchers and credit-tokens applies to all employees.

Section 267: Exemption of credit-tokens used for exempt benefits

1092. This section derives from section 142(3A) and (3B) of ICTA, section 49(1) and (2) of FA 1999, and ESCs A58, A59, A66 and A74. The inclusion of the exemptions provided by the ESCs is a minor change to the law. See *Changes 47, 48 and 49* in Annex 1.

Section 268: Exemption of vouchers and tokens for incidental overnight expenses

1093. This section exempts from charge by virtue of Chapter 4 of Part 3 both non-cash vouchers and credit-tokens used to meet “incidental overnight expenses”. It derives mainly from sections 141(6C) and 142(3C) of ICTA.
1094. *Subsection (1)* sets out the terms of the exemption where the voucher or token is used to obtain goods, services or money.
1095. *Subsections (2) to (5)* set out the conditions to be satisfied.
1096. *Subsection (6)* provides definitions of terms used in the section by cross-reference to the exemption in sections 240 (incidental overnight expenses and benefits) and 241 (incidental overnight expenses and benefits: overall exemption limit) for equivalent direct provision.

Section 269: Exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle

1097. This section exempts from charge by virtue of Chapter 4 of Part 3 both non-cash vouchers and credit-tokens used for expenditure on taxable cars or vans, or on exempt heavy goods vehicles.
1098. *Subsection (1)* sets out the exemption. It derives from sections 157(3)(b), 159AA(3)(b) and 159AC(3)(b) of ICTA.
1099. *Subsection (2)* qualifies the exemption by reference to the provisions of section 149 (benefit of car fuel treated as earnings) where what is obtained is fuel for a car.
1100. *Subsections (3) and (4)* provide definitions of terms used in the section and make clear the tax year for which the car, van or heavy goods vehicle is taxable or exempt. See *Note 33* in Annex 2.
1101. The definition of how a heavy goods vehicle is “exempt” for the purposes of this section ensures that the exemption applies where the employee is in lower-paid employment. This is a minor change to the law. See *Change 43* in Annex 1.

Section 270: Exemption for small gifts of vouchers and tokens from third parties

1102. This section provides there is no liability to tax by virtue of Chapter 4 of Part 3, in respect of small gifts from third parties which take the form of a non-cash voucher or credit-token, where conditions are satisfied. It derives from ESC A70A and is a minor change to the law. See *Change 59* in Annex 1.
1103. *Subsection (1)* sets out the terms of the exemption where the conditions are satisfied.
1104. *Subsections (2) to (4)* set out the conditions, in part by cross-reference to the provisions of section 324 (small gifts from third parties).

Chapter 7: Exemptions: Removal benefits and expenses

Section 271: Limited exemption of removal benefits and expenses: general

1105. This section gives details of the limited exemption for removal expenses. It sets out the general proposition that no liability to income tax arises in respect of any removal benefits or reimbursed removal expenses listed in this Chapter, up to the limit set out in section 287 of this Act. The section derives from parts of paragraph 1 of Schedule 11A to ICTA.
1106. *Subsection (1)* sets out the basic proposition that the exemption is available. The opening words of paragraph 1(1) of Schedule 11A, “where by reason of a person’s employment” have not been rewritten. Those words are not necessary because there is

no tax charge in respect of benefits or reimbursed expenses unless they arise “by reason of a person’s employment”. The exemptions in this Chapter only apply where there is the possibility of such a charge.

1107. *Subsection (2)* reproduces the effect of the exclusion, by virtue of paragraph 1(1) of Schedule 11A, of certain income from the exemption because it is within Case III of Schedule E. Paragraph 2 of Schedule 11A ensures that the exemption from charge under Cases I and II of Schedule E does not result in the benefits or expenses being chargeable under Case III of Schedule E, as a result of the operation of section 131(2) of ICTA. In this Act, by virtue of the provisions that define “taxable earnings” for the purposes of Chapter 4 of Part 2, it is no longer possible for the same earnings to fall within one of those provisions and also within “taxable earnings” as defined for the purposes of Chapter 5 of Part 2. As a consequence there is no need to rewrite paragraph 2.
1108. *Subsection (3)* gives a signpost to the section containing the limit on the exemption.

Section 272: Removal benefits and expenses to which section 271 applies

1109. This section identifies the types of benefits and expenses that qualify for the exemption. It derives from paragraphs 3, 4, 7 and 16 of Schedule 11A to ICTA.
1110. *Subsection (1)* lists all the benefits potentially within the scope of the limited exemption set out in section 271. It gives signposts to the sections that contain the detailed descriptions of those benefits and states the overriding conditions that must be satisfied.
1111. *Subsection (2)* ensures that if a voucher or credit-token is used to obtain goods or services or money to pay for them such benefits are within the scope of the exemption. See *Change 60* in Annex 1.
1112. *Subsection (3)* lists the types of expenses that qualify for the exemption. It relies largely on the list in subsection (1) and adds, in *paragraph (c)*, one expense for which there is no corresponding benefit.
1113. One of the conditions for the exemption to be available is that the benefits must be provided or that the reimbursed expenses must be incurred on or before a particular day. In the source legislation that day is called the “relevant day” and is defined in paragraph 6 of Schedule 11A to ICTA. That label has been changed to “the limitation day”, which is defined in section 274 of this Act.

Section 273: Conditions applicable to change of residence

1114. This section gives more details about the three conditions referred to in section 272(1) (a). The section derives from paragraph 5 of Schedule 11A to ICTA. The words in brackets in paragraphs 5(1)(b) and (c) of Schedule 11A have not been reproduced, as they do not add anything.
1115. *Subsection (1)* introduces the three subsections that give details of the conditions.
1116. *Subsection (2)* identifies the three possible events that can trigger the exemption.
1117. *Subsection (3)* is concerned with the reason for the change of residence.
1118. *Subsection (4)* contains a restriction on the application of the exemption if a change of residence would be unnecessary.

Section 274: Meaning of “the limitation day”

1119. This section defines “the limitation day”, which rewrites the idea labelled “the relevant day” in ICTA, using a reference to a new concept, “the employment change”. The section derives from paragraph 6 of Schedule 11A to ICTA.
1120. *Subsection (1)* defines “the limitation day”, subject to subsection (2).

1121. *Subsection (2)* gives scope for the Inland Revenue to extend the period before the limitation day, if it seems reasonable to do so. The reference to “Inland Revenue” reflects the practice whereby the Board of Inland Revenue delegates the initial decision on this matter to the Officer in Charge of the local office concerned. See *Change 158* in Annex 1.

Section 275: Meaning of “the employment change”

1122. This section is pure drafting, which defines the new label “the employment change”.
1123. A number of the later paragraphs in Schedule 11A to ICTA refer to the circumstances set out in paragraph 5(1). The relevant change in those circumstances, now rewritten in section 273(2), has been given the label “the employment change” to make the rewriting of those references more straightforward.

Section 276: Meaning of “residence”, “former residence” and “new residence” etc.

1124. This section defines three labels related to the employee’s various possible residences, including a definition of “residence” itself. The section derives from section 191B(16) of ICTA and paragraph 25 of Schedule 11A to ICTA.
1125. In *subsection (1)* there is no longer a reference to an employee’s “sole or main residence”. Instead the residence in question is defined more closely as being the employee’s main residence.
1126. *Subsection (2)* defines “former residence” and “new residence”.
1127. *Subsection (3)* defines what is meant by “an interest in a residence”.

Section 277: Acquisition benefits and expenses

1128. This section combines two similar provisions and so cuts out duplication. It sets out the benefits and expenses associated with the acquisition of a residence that come within this Chapter. The same approach (of combining the rules for benefits and expenses) has been adopted in a number of the following sections. The section derives from paragraphs 9 (expenses) and 18 (benefits) of Schedule 11A to ICTA.
1129. *Subsection (1)* makes it clear that the interest in the new residence need not be held exclusively or indeed at all by the employee, provided it is held (either exclusively or jointly) by one or more members of the employee’s family or household.
1130. *Subsection (2)* identifies the types of benefit within the section.
1131. *Subsection (3)* identifies the types of expenses within the section, by building on the description of some of the benefits covered and adding those expenses where there is no equivalent benefit.
1132. *Subsection (4)* broadens the scope of who can raise a loan, other than or as well as the employee, in similar terms to those applying to an interest in the new residence covered in subsection (1).
1133. *Subsection (5)* defines terms used in subsection (3)(d).

Section 278: Abortive acquisition benefits and expenses

1134. This section brings together in one section the provisions relating to expenses and benefits connected with an abortive acquisition of a new residence. It describes the circumstances that could lead to it being applied and relates back to section 277 to identify the type of benefits or expenses covered. The section derives from paragraphs 10 (expenses) and 19 (benefits) of Schedule 11A to ICTA.

Section 279: Disposal benefits and expenses

1135. This section brings together in one section the provisions relating to expenses and benefits connected with the disposal of the employee's former residence. The section derives from paragraphs 8 (expenses) and 17 (benefits) of Schedule 11A to ICTA.
1136. *Subsection (1)* describes the circumstances in which the section applies.
1137. *Subsection (2)* identifies the types of benefit within the section.
1138. *Subsection (3)* identifies the types of expenses within the section, by building on the description of some of the benefits covered and adding those expenses where there is no equivalent benefit.
1139. *Subsection (4)* broadens the scope of who can have an interest in the former residence, other than or as well as the employee, in similar terms to those applying to an interest in the new residence as covered in section 277(1), dealt with in paragraph 1129.
1140. *Subsection (5)* defines what is meant by "related loan" for the purposes of this section. This Act widens the scope of loans that qualify for exemption under this section. See *Change 61* in Annex 1.

Section 280: Transporting belongings

1141. This section brings together in one section the provisions relating to expenses and benefits connected with the transportation of belongings. It derives from paragraphs 11 (expenses) and 20 (benefits) of Schedule 11A to ICTA.
1142. *Subsection (1)* identifies the types of benefit within the section.
1143. *Subsection (2)* identifies the types of expenses within the section, by reference to the description of the benefits covered.
1144. *Subsection (3)* defines "domestic belongings" and "transportation".

Section 281: Travelling and subsistence

1145. This section brings together in one section the provisions relating to expenses and benefits connected with travelling and subsistence. It derives from paragraphs 12 (expenses), 21 (benefits) and 28 of Schedule 11A to ICTA.
1146. *Subsection (1)* identifies the types of benefit within the section. *Subsection (1)(f)* introduces a new label "education-linked living accommodation". *Subsection (1)(g)* introduces a new label "the employee's accommodation". It also widens the scope of the exemption for travel to and from such accommodation. See *Change 62* in Annex 1.
1147. *Subsection (2)* defines "education-linked living accommodation".
1148. *Subsection (3)* defines "the employee's accommodation".
1149. *Subsection (4)* identifies the types of expenses within the section, by reference back to the description of the benefits covered.
1150. *Subsection (5)* identifies some exclusions from the exemptions provided by this section, by reference to circumstances described in subsequent sections.
1151. *Subsection (6)* defines "new duties", "former area", "new area", "relevant child" and "subsistence".

Section 282: Exclusion from section 281 of benefits and expenses where deduction allowed

- 1152. This section identifies benefits and expenses that are excluded from the exemptions provided for in this Chapter. It derives from paragraphs 12(4) and 21(7) and (8) of Schedule 11A to ICTA.
- 1153. *Subsection (1)* states the general proposition about exclusion of certain benefits or expenses by reference to an amount being deductible under other provisions.
- 1154. *Subsection (2)* identifies those provisions.
- 1155. *Subsection (3)* deals with the circumstance where a deduction might be allowed for only part of a benefit provided. In that case the other part of the benefit might still be exempt.

Section 283: Exclusion from section 281 of taxable car and van facilities

- 1156. This section provides that the exemption does not apply to car or van benefits. It derives from paragraphs 21(2) and (4) to (6) of Schedule 11A to ICTA.
- 1157. *Subsection (1)* provides that the exemption in section 281(1) does not apply to car or van benefits. The Act widens the scope of the exemption when compared with a strict interpretation of the source legislation. See *Change 63* in Annex 1.
- 1158. *Subsection (2)* identifies the sections containing the definitions of the terms used in subsection (1).

Section 284: Bridging loan expenses

- 1159. This section deals with bridging loan expenses (interest) connected with an employee's change of residence resulting from an employment change. It derives from paragraph 13 of Schedule 11A to ICTA.
- 1160. *Subsection (1)(a)* combines the first two conditions that the bridging loan must satisfy, which are in paragraph 13(1)(a) and (b) of Schedule 11A. *Subsection (1)(b)* and (c) list the other conditions.
- 1161. *Subsection (2)* gives a restricted definition of interest that falls within the section. Paragraphs 13(4) and (5) of Schedule 11A set out the purpose for which the loan must have been used. The Act combines those provisions without any change in effect. The same change as described in paragraph 1140 in relation to section 279 has been made here. See *Change 61* in Annex 1.
- 1162. *Subsection (3)* places a further restriction on the amount of interest that can come within the section.
- 1163. The source legislation does not specify how to allocate the total loan interest between exempt and non-exempt parts of the loan where paragraph 13(3) and (4) of Schedule 11A both apply. *Subsection (4)* recognises that possibility by introducing the idea of "the appropriate fraction". See *Change 64* in Annex 1.
- 1164. *Subsection (5)* includes a method statement to explain how to arrive at the appropriate fraction. See *Change 64* in Annex 1.
- 1165. *Subsection (6)* combines in one subsection the provisions from paragraph 13(7) of Schedule 11A that extend the meaning of interest payable by an employee and paragraph 13(8) of Schedule 11A that apply a parallel extension in meaning to references to a loan being raised by the employee.

Section 285: Replacement of domestic goods

- 1166. This section brings together in one section the provisions relating to expenses and benefits connected with replacing domestic goods. The heading in the source

legislation, “duplicate expenses”, does not really describe what this provision is about. The new heading is more informative. The section derives from paragraphs 14 (expenses) and 22 (benefits) of Schedule 11A to ICTA.

1167. *Subsection (1)* describes the circumstances in which the section operates. Under paragraph 14(2) of Schedule 11A if an employee sells any of the domestic goods replaced by the new goods covered by paragraph 14(1) of Schedule 11A, the sale proceeds have to be deducted from the amount that qualifies under that paragraph. This subsection does not reproduce that requirement to deduct the sale proceeds of replaced domestic goods. See *Change 65* in Annex 1.
1168. *Subsection (2)* broadens the scope of who can have an interest in the new and/or former residence(s), other than or as well as the employee, in similar terms to those applying to an interest in the new residence as covered in section 277(1), dealt with in paragraph 1129.

Section 286: Power to amend sections 279 to 285

1169. This section brings together the provisions dealing with the Treasury’s regulation-making powers. It derives from paragraphs 15 (expenses) and 23 (benefits) of Schedule 11A to ICTA.
1170. *Subsection (1)* provides powers that allow the Treasury to make regulations to extend sections 279 to 285 to bring within their scope benefits or expenses not otherwise covered.
1171. *Subsections (2) and (3)* allow the Treasury some latitude in what they may do and how they may do it.
- Subsection (4)* prevents the Treasury from making retrospective regulations under the powers in this section.

Section 287: Limit on exemption

1172. This section sets out the limit on the total amount of the exemption available under this Chapter. It derives from paragraph 24 of Schedule 11A to ICTA.
1173. *Subsection (1)* states the limit that applies to the amount of benefits and expenses that can be exempted.
1174. *Subsection (2)* includes a list of items that count towards the £8,000 limit. *Subsection (2) (b)* states that the benefit code earnings, which in this Act includes amounts related to the use of vouchers and/or credit-tokens, are to be counted towards the value of the exemption. See *Change 60* in Annex 1.
1175. *Subsection (3)* explains what is meant in subsection (2) by “the section 62 earnings”.
1176. *Subsection (4)* explains what is meant in subsection (2) by “the benefits code earnings”. In combination with subsection (2)(b) it prevents any possible double counting of an amount. See *Change 66* in Annex 1.
1177. The source provisions also go into great detail about how to quantify the amount of benefit relating to the provision of living accommodation in paragraph 24(4) to (8) of Schedule 11A. *Subsection (5)* amalgamates all that detail. It brings together the various permutations for the computation of amounts chargeable in such cases.

Section 288: Limited exemption of certain bridging loans connected with employment moves

1178. This section gives details of what kind of loan is covered. It contains a formula for working out the day by which the loan must be repaid if there is to be no charge to tax under what was section 160 of ICTA (rewritten in Chapter 7 of Part 3 of this Act, mainly

in section 175). It also includes some interpretative provisions. The section derives from section 191B(1) to (6), (10) to (12) and parts of (8), (9) and (13) of ICTA.

- 1179. *Subsection (1)* describes the circumstances in which the exemption arises.
- 1180. *Subsection (2)* describes in what circumstances a loan is within the term “a removal benefit” as used in subsection (1).
- 1181. *Subsection (3)* describes how there can be “unused removal benefit exemption” as mentioned in subsection (1).
- 1182. *Subsection (4)* shows how to calculate the amount of “the exempted loan discharge period”, as mentioned in subsection (1).
- 1183. *Subsection (5)* broadens the scope of who can raise a loan that qualifies for the exemption. Similarly it broadens who can have an interest in the new and/or former residence(s), other than, or as well as, the employee. It does that in similar terms to those applying to an interest in the new residence as covered in section 277(1), dealt with in paragraph 1129.
- 1184. *Subsection (6)* provides for the tax payable to be decided on a provisional basis, should the whole circumstances surrounding the loan not be known at the time the need to make a decision arises.

Section 289: Relief for certain bridging loans not qualifying for exemption under section 288

- 1185. This section provides a measure of relief for those loans that do not qualify under the provisions of the section 288. It derives from section 191B(8) and (13) of ICTA.
- 1186. *Subsection (1)* describes the circumstances in which this section applies.
- 1187. An employee who has a bridging loan that would otherwise come within the provisions of the preceding section may not repay that loan until after the day determined by the formula set out in section 288(4). If so, the employee would not come within the exemption now set out in that section. In such a case the employee’s liability in respect of the beneficial loan under section 175 of this Act is worked out as if the loan had been made on the day determined by that formula. *Subsection (2)* rewrites the corresponding provision from the source legislation.
- 1188. *Subsection (3)* maintains the position in the source legislation whereby that extension only applies to those matters covered by what was section 160 of ICTA and not to the matters covered by what was section 161 of ICTA.
- 1189. *Subsection (4)* provides for the tax payable to be decided on a provisional basis, should the whole circumstances surrounding the loan not be known at the time the need to make a decision arises.

Chapter 8: Exemptions: Special kinds of employees

Section 290: Accommodation benefits of ministers of religion

- 1190. This section provides that there is no liability to tax in respect of benefits arising in connection with accommodation provided for a full-time minister (defined at subsection (5)) in premises owned by a charity or ecclesiastical corporation.
- 1191. It derives from section 332 of ICTA.
- 1192. *Subsection (1)* provides that no liability to tax arises in respect of the payment or reimbursement of a statutory amount or statutory deduction. Both these terms are defined at subsection (5).

1193. *Subsection (2)* provides that no liability to tax arises in respect of expenses paid or reimbursed in connection with the provision of the accommodation where the minister is in “excluded employment”. “Excluded employment” is defined in section 239(9).
1194. *Subsection (3)* excludes from the exemptions any parts of the property for which the minister is in receipt of rent.
1195. *Subsection (4)* defines the premises in respect of which benefits qualify for the exemption.
1196. *Subsection (5)* provides definitions for terms used in the section, including a definition of “charity” drawn from section 506(1) of ICTA. See *Note 34* in Annex 2.

Section 291: Termination payments to MPs and others ceasing to hold office

1197. This section derives from section 190 of ICTA. It refers to Acts that give MPs, MEPs and certain other political office-holders an entitlement to termination payments. That entitlement, established prior to termination, makes the payments chargeable to tax as earnings. The payments are in fact compensation for loss of office. If it were not for the predetermined entitlement they would normally fall within section 148 of ICTA and tax would be chargeable on an amount above the £30,000 threshold.
1198. This section ensures that such payments are not treated as earnings and are instead taxed as termination payments under Chapter 3 of Part 6 (which derives from section 148 of ICTA), subject to the threshold set out in that Chapter.
1199. Section 190(3) of ICTA applies to “grants and payments if they are not pension payments”. The reference to pension payments is unnecessary because section 190 applies to “emoluments” and pension payments are not taxed as emoluments. The reference to pension payments has not been included in the rewritten section because they are not taxed as employment income.
1200. The reference to the Parliamentary Pensions Act 1984 has been omitted as it was repealed by the Ministerial and other Pensions and Salaries Act 1991 and would only apply where the loss of office was before 28 February 1991. It is now spent.
1201. The meaning of “a relevant office” is set out in section 4(6) of the Ministerial and Other Pensions and Salaries Act 1991. Broadly it covers all Government Ministers, Opposition Leaders and Whips, the Chairman and Deputy Chairmen of Ways and Means, and the Chairman and Deputy Chairman of Committees of the House of Lords.

Section 292: Overnight expenses allowances of MPs

1202. This section derives from part of section 200 of ICTA. It provides an exemption from income tax for certain allowances paid to Members of Parliament which without the exemption would be chargeable to tax as earnings.
1203. The allowances that qualify are those provided for by a resolution of the House of Commons covering the overnight expenses set out in the section, where an MP has to stay away from home overnight either in London or in the constituency in order to carry out Parliamentary duties.
1204. The material in sections 200 and 200ZA of ICTA has been rearranged. Overnight expense allowances to members of the House of Commons are dealt with in this section. Those paid to members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly are covered in section 293. Travel by members to European Union institutions or to the parliament of another member State is dealt with in section 294.
1205. Although the allowances are exempt from tax this section does not prohibit a deduction for an MP’s expenses in respect of which the allowances are paid. That prohibition is in section 198(4) of ICTA, which is rewritten as section 360.

Section 293: Overnight expenses of other elected representatives

1206. This section derives from the overnight expenses part of section 200ZA of ICTA in respect of elected representatives of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.
1207. This exemption has not been combined with the similar one for Members of the House of Commons because the detailed rules are different. It is clearer to keep them separate. Again, this section is supplemented by section 360.

Section 294: EU travel expenses of MPs and other representatives

1208. This section brings together the exemption for European Union travelling expenses paid to MPs and members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It derives from parts of sections 200 and 200ZA of ICTA.
1209. The definition of European Union travel expenses is the same in both section 200 and section 200ZA of ICTA. It incorporates the extension to EU candidate countries made by section 41 of FA 2002. Combining the relevant parts of the two sections cuts out duplication. Again this section is supplemented by section 360.

Section 295: Transport and subsistence for Government ministers etc.

1210. This section provides an exemption in respect of transport or subsistence provided for certain Government office-holders, mainly Ministers, and members of their families or households. It derives from section 200AA of ICTA. The exemption also covers payments and reimbursements of travel and subsistence expenses if they are made by or on behalf of the Crown.
1211. The exemption was extended in FA 1999 to apply to Ministers and similar office-holders serving in the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.
1212. For the purposes of this exemption, the provision of transport includes the provision of a car, which would otherwise give rise to a charge to tax under the benefits code. The source legislation applies the exemption specifically to cars, but then goes on to define a car as “any mechanically propelled road vehicle” – a phrase which could include, for example, a van or a motorbike. This slight incongruity has been removed by applying the exemption to the provision of a “vehicle”, and defining “vehicle” in the same way as “car” is defined in the source legislation. It therefore applies to vans and motorbikes as well as cars.

Section 296: Armed forces’ leave travel facilities

1213. This section provides there is no liability to tax on armed forces’ leave travel facilities. It derives from section 197 of ICTA.
1214. *Subsection (1)* sets out the exemption. It covers the various travel warrants and allowances, including allowances for the use of private cars, made available to service personnel.
1215. The section substitutes “the armed forces of the Crown” for the wording, “the naval, military or air forces of the Crown”, in section 197 of ICTA. The two terms are construed as having the same meaning and include all United Kingdom service personnel, both members of a regular force and members of a reserve force. References to the “armed forces” now also include the women’s services, which was not the position in 1977 when the exemption was introduced. The same term is used in this section and in section 297 for the same body of taxpayers.

1216. *Subsection (2)* excludes the provision of a vehicle for leave travel. Such provision remains taxable as a benefit under Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits). “Travel facilities” are not otherwise defined or limited.

Section 297: Armed forces’ food, drink and mess allowances

1217. This section provides that no liability to income tax arises in respect of allowances paid to members of the armed forces, if those allowances are paid instead of food or drink, or as a contribution to the expenses of a mess. The section is the first of two that derive from parts of section 316 of ICTA.
1218. The legislation in section 316 derives from a number of different provisions originally enacted between 1946 and 1951. Those provisions were consolidated first as section 457 of ITA 1952 and then as section 366 of ICTA 1970 before becoming section 316. In the case of *Lush (HM Inspector of Taxes) v Coles* (1967) 44 TC 169, at 172G, Stamp J described them as containing “something of a hotchpot”.
1219. Section 316 has five subsections, which may be divided into three categories.
1220. The first category consists of subsection (3), which deals with food and mess allowances. Subsection (3) is dealt with in this section. The subsection makes provision for two different categories of allowances; and it has been found helpful to deal with the two categories separately.
1221. The second category consists of subsection (4), which deals with training expenses allowances. Subsection (4) is dealt with in section 298.
1222. The third category consists of subsections (1), (2) and (5). These subsections deal with re-enlistment bounties and gratuities under schemes set up in 1946 and 1950 for certain categories of military personnel who had seen active service, either during the Second World War or in the years immediately following it. So far as may now be discovered, these schemes all came to an end many years ago; and consultations between the Inland Revenue and the Ministry of Defence have led to agreement that these provisions should not be retained. These subsections are not rewritten in this Act on the grounds that they are obsolete.

Section 298: Reserve and auxiliary forces’ training allowances

1223. This section provides that no liability to income tax arises in respect of training allowances and bounties payable out of the public revenue to members of the reserve and auxiliary forces of the Crown. The section is the second of two deriving from provisions contained in section 316 of ICTA, and derives from subsection (4) of that section.
1224. This provision was litigated in *Lush (HM Inspector of Taxes) v Coles* (1967) 44 TC 169, where the taxpayer was an officer in the Civil Defence Corps who received a training bounty of £15 from local authority funds. The General Commissioners upheld his appeal against an assessment under Schedule E on the grounds that the bounty fell within what is now section 316(4). But the Inspector’s appeal to the High Court was successful, because Stamp J held that a sum paid out of local authority funds could not be described as being paid “out of the public revenue”.

Section 299: Crown employees’ foreign service allowances

1225. This section provides there is no liability to tax on allowances paid to Crown employees as compensation for the extra cost of having to live outside the United Kingdom when working abroad. It derives from section 319 of ICTA.
1226. An allowance is exempt only if a certificate as to its purpose has been given by the Treasury or by an appropriate Minister.

1227. *Subsection (2)* lists the persons who, in addition to the Treasury, may give such a certificate.
1228. That list derives from the [Transfer of Functions \(Foreign Service Allowance\) Order, SI 1996 No 313](#) (as varied by the [Transfer of Functions \(Lord Advocate and Secretary of State\) Order, SI 1999 No 678](#) with effect from 19 May 1999, and the [Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002, SI 2002 No 794](#) with effect from 27 March 2002).

Section 300: Consuls

1229. This section provides that employment income from the office of a consul (defined in subsection (3)) in the United Kingdom in the service of a foreign state is not liable to income tax.
1230. It derives from section 321 of ICTA.
1231. *Subsection (1)* provides the exemption.
1232. *Subsection (2)* provides that the income is also disregarded in estimating income for any other income tax purpose.
1233. *Subsection (3)* defines “consul”.

Section 301: Official agents

1234. This section provides that employment income from an employment as an official agent (defined at subsection (5)) in the United Kingdom for a foreign state is not liable to tax if certain conditions are met.
1235. It derives from section 321 of ICTA.
1236. *Subsection (1)* provides that no liability arises on the employment income when two conditions are met.
1237. *Subsection (2)* gives the first of those conditions.
1238. *Subsection (3)* gives the second of those conditions.
1239. *Subsection (4)* provides that such income is disregarded in estimating the amount of income for any income tax purpose.
1240. *Subsection (5)* defines “official agent”.
1241. *Subsection (6)* provides a condition to the definition of “official agent” in subsection (5).

Section 302: Consular employees

1242. This section provides that employment income from an employment in the United Kingdom as a consular employee (defined at subsection (4)) of a foreign state is not liable to tax where the appropriate Order in Council has been made and certain conditions are met.
1243. It derives from section 322 of ICTA.
1244. *Subsection (1)* provides that no liability arises on the employment income when an Order in Council gives effect to a reciprocal arrangement (defined at subsection (4)) and one of two conditions is met.
1245. *Subsection (2)* gives the first condition.
1246. *Subsection (3)* gives the second condition. Following the enactment of the British Overseas Territories Act 2002, references to “British Dependent Territories citizen” in

earlier enactments are to be read as “British overseas territories citizen”. This has been incorporated here.

1247. *Subsection (4)* defines “consular employee” and “reciprocal arrangement”.
1248. *Subsection (5)* allows an Order in Council to limit the operation of the section in such a way as is considered necessary or expedient.
1249. *Subsection (6)* allows the Order in Council to have effect from an earlier date than the date on which it is made and to contain transitional provisions.
1250. *Subsection (7)* provides that the statutory instrument containing the Order is subject to a negative resolution.
1251. *Subsection (8)* provides that this section operates without prejudice to section 301.

Section 303: Visiting forces and staff of designated allied headquarters

1252. This section confers income tax benefits upon visiting forces and NATO staff.
1253. The section derives from section 323 of ICTA, which confers two income tax benefits:
- earnings paid by the government of a designated country or by a designated allied headquarters are exempt from income tax; and
 - an individual to whom the section applies is not treated as resident in the United Kingdom by reason solely of being a member of a visiting force or of being attached to, or an employee of, a designated allied headquarters.
1254. This section deals with the first income tax benefit. It is proposed to deal with the second benefit in a future rewrite Bill.
1255. The exemption from income tax applies for several different descriptions of individuals:
- members of a visiting force of a designated country;
 - members of a civilian component of a visiting force of a designated country;
 - members of the armed forces of a designated country attached to a designated allied headquarters;
 - members of a civilian component of the armed forces of a designated country attached to a designated allied headquarters; and
 - employees of a designated allied headquarters who come within a description agreed between the government and the other members of the NATO Council.
1256. Section 323 of ICTA is entitled “Visiting forces”. This section has a longer title, which is designed to be more informative.
1257. Two definitions needed for this section are contained in Part 1 of the Visiting Forces Act 1952. The definitions are those of a visiting force, in section 12(1) of that Act, and of a member of a civilian component of a visiting force, in section 10 of that Act. No attempt has been made to set out those definitions in this section – partly for reasons of length and partly because there is no wish to lose the explicit link between this section and the 1952 Act.
1258. Following the enactment of the British Overseas Territories Act 2002, references to “British Dependent Territories citizen” in earlier enactments are to be read as “British overseas territories citizen”. This change has been incorporated in *subsection (4)*.
1259. In this section, the cross-references to the Visiting Forces Act 1952 differ slightly from those in section 323 of ICTA. *Subsection (5)* contains a reference to “Part 1 of the Visiting Forces Act 1952” as opposed to the reference to “the Visiting Forces Act 1952”

in section 323(4). The additional words “Part 1 of” were in section 367(3) of ICTA 1970 (the predecessor of section 323(4) of ICTA 1988). These words have been reinstated, because the two most important interpretative provisions, for present purposes, are in Part 1 of the 1952 Act and apply for the purposes of that Part. Those provisions are the definitions of a member of a civilian component of a visiting force and of a visiting force.

1260. Subsection (5) also corrects another minor drafting error in section 323(4). That subsection refers to subsections (1) and (2) of section 323, and it is then stated that “those subsections shall be construed as one with the Visiting Forces Act 1952”. However, the reference to a “civilian component” of a visiting force depends entirely upon subsection (4) itself; and no requirement is imposed to construe subsection (4) as one with the 1952 Act. It is thought that there cannot be any doubt that the provisions of section 10 of the Visiting Forces Act 1952 must be applicable; and the provision has been rewritten on this basis.
1261. [Section 323](#) is one of a number of provisions that confer tax benefits to visiting forces and NATO staff. Other provisions are:
- section 11(1) of TCGA 1992 (for capital gains tax);
 - section 155 of the Inheritance Tax Act 1984 (for inheritance tax); and
 - section 74 of the Finance Act 1960 (for stamp duty).

Section 304: Experts seconded to European Commission

1262. This section provides there is no liability to tax on daily subsistence allowances paid by the European Commission to “detached national experts”.
1263. It derives from ESC A84. See *Change 67* in Annex 1.
1264. *Subsection (1)* sets out the exemption for allowances paid to persons seconded under the “detached national experts scheme”.
1265. Detached national experts are people seconded to the Commission to advise and assist Commission officials for periods from three months to three years, under a scheme introduced on 26 July 1988.
1266. *Subsection (2)* defines “detached national experts scheme” and provides for the exemption from tax to continue in the event that the scheme is replaced by a new scheme having broadly the same effect.

Section 305: Offshore oil and gas workers: mainland transfers

1267. This section provides an exemption from income tax for certain benefits received by a limited number of employees who work on offshore oil or gas installations. It derives from ESC A65. Legislating the concession is a minor change to the law. See *Change 68* in Annex 1.
1268. Those employees whose permanent workplace is the installation would normally be chargeable to tax in respect of any transport, accommodation and subsistence provided. That is because the travel to that workplace would be travel between home and work, so no deduction could be claimed under Part 5 for that or for any associated accommodation and subsistence. Under ESC A65 such benefits are not charged to tax.
1269. The provision of transport exempted by this section is confined to that part of the journey between home and work which starts at the mainland departure point from which the oil and gas rig workers are normally transported to the offshore installation. In *subsection (3)* this is defined as “transfer transport”. Apart from travel from the nearby overnight accommodation (defined in *subsection (6)* as “local transport”), it does not

provide exemption for travel between the mainland departure point and a place other than the offshore installation.

1270. If the employee has a permanent workplace on the mainland, the provision of transport to the installation is not exempt, but a deduction under Part 5 would be available. The same applies to the accommodation and subsistence in connection with such travel. This position is preserved by *subsection (5)* which makes it clear that the exemption only applies to the provision of transport, accommodation and subsistence for which a deduction would not be due if the employee had met the cost.

Section 306: Miners etc.: coal and allowances in lieu of coal

1271. This section provides an exemption from income tax to free coal, and smokeless fuel, and payments in lieu of free coal given to miners and certain other colliery workers. It derives from ESC A6. Legislating the concession is a minor change to the law. See *Change 69* in Annex 1.
1272. *Subsection (1)* identifies the scope of the exemption and who qualifies.
1273. *Subsection (2)* limits the scope of the exemption to the provision of free coal, or the payment of cash in lieu, of an amount that represents a reasonable level of personal consumption. But *subsection (3)* assumes that this condition is met unless the Inland Revenue can show that it is not. The purpose of these two subsections is to reproduce the restriction that applies to all ESCs - a concession will not be given where an attempt is made to use it to avoid tax. It is not expected that anyone benefiting from the concession will not continue to benefit from exemption under this section.
1274. *Subsection (4)* gives the definition of “colliery worker”. It includes all those persons who were regarded as coming within the scope of the concession.

Chapter 9: Exemptions: Pension provision

Section 307: Death or retirement benefit provision

1275. This section provides an exemption from the charge under the benefits code in respect of the provision by an employer for death or retirement benefits for an employee. It derives from a combination of the exemptions currently available under section 155(4) of ICTA and under ESC A72. That concession widens the scope of section 155(4), which only applies to death etc benefits payable to an employee’s spouse, children or dependants. The concession covers death etc benefits payable to other members of the employee’s family or household as defined in section 168(4) of ICTA. That definition is now in section 721(5).
1276. To the extent that this section legislates ESC A72 it is a minor change to the law. See *Change 70* in Annex 1.
1277. An employee normally nominates the person to whom any death benefits should be paid. The exemption only applies if that nominee remains a member of the employee’s family or household.

Section 308: Exemption of contributions to approved personal pension arrangements

1278. This section provides there is no liability to income tax on contributions by an employer under approved personal pension arrangements made by the employee. It derives from section 643(1) of ICTA.
1279. *Subsection (1)* provides there is no liability to income tax on such contributions as earnings.

1280. *Subsection (2)* sets out relevant definitions by cross-reference to section 630(1) of ICTA.
1281. A personal pension scheme may be approved by the Board of Inland Revenue under section 631 of ICTA, in accordance with the rules in Chapter 4 of Part 14 of that Act.

Chapter 10: Exemptions: Termination of employment

Section 309: Limited exemptions for statutory redundancy payments

1282. This section provides for limited exemptions from income tax in respect of redundancy payments and approved contractual payments.
1283. *Subsection (1)* provides that there is no liability to income tax on redundancy payments and approved contractual payments as general earnings, except where *subsection (2)* applies. That subsection applies where the amount of an approved contractual payment exceeds the amount which would have been due if a redundancy payment had been payable. In such a case the excess is liable to income tax.
1284. *Subsection (3)* provides that there is no liability to income tax on redundancy payments and approved contractual payments as specific earnings, except under Part 6 Chapter 3 (payments and benefits on termination of employment).
1285. This section derives from parts of sections 579 and 580 of ICTA. It is drafted by reference to an “approved contractual payment” as opposed to the “corresponding amount of any other employer’s payment” – the expression used in section 579(1). The section also introduces the expression “statutory payment” to describe the sum specified in section 579(6). These new expressions should make the legislation easier to follow. They also have the consequence that it is possible to dispense with the definition of “the Minister” in section 580(1)(c).

Section 310: Counselling and other outplacement services

1286. This section provides there is no liability to income tax on the provision of counselling and other services in connection with the cessation of a person’s employment.
1287. It derives from sections 589A and 589B of ICTA as they apply to an employee. The provisions of 589A and 589B as they apply to an employer do not change, except that they have been amended to reflect the minor changes to the law made in this section. See paragraph 69 of Schedule 6.
1288. *Subsection (1)* provides the exemption and the conditions to be satisfied.
1289. *Subsection (2)* sets out condition A, which relates to the purpose of the provision of the services.
1290. *Subsection (3)* sets out condition B, which relates to the services provided.
1291. *Subsection (4)* sets out condition C, which relates to the qualifying two year period of continuous employment.
1292. Under the Employment Rights Act 1996, some events that involve a change in the identity of the employer are treated as not breaking the continuity of employment. The two year requirement is therefore expressed in terms of the employment that is ceasing, not of employment by the employer. See *Change 71* in Annex 1.
1293. *Subsection (5)* sets out condition D, which relates to the availability of the services to employees generally.
1294. *Subsection (6)* sets out condition E, which relates to travel expenses.
1295. Travel expenses meeting condition E include expenses that, on the assumptions in subsection (7), would be deductible under any provision of Part 5. Under ICTA,

expenses within the exemption are restricted to expenses deductible only under selected sections of those rewritten in that Part. See *Change 73* in Annex 1.

- 1296. This section is listed in section 332 (meaning of “the deductibility provisions”). Various provisions in Part 5 then ensure that certain rules in Part 5 do not adversely restrict expenses, deductible under that Part, for the purposes of condition E.
- 1297. *Subsection (7)* sets out the assumptions made in applying condition E to travelling expenses. To accord with Inland Revenue practice, one of those assumptions is that the expenses are incurred and paid by the employee. But the assumption that they are paid out of emoluments has not been rewritten. See *Change 81* in Annex 1.
- 1298. To accord with Inland Revenue practice, the section omits the condition in section 589B(2)(e) of ICTA, that the services are provided in the United Kingdom, and the apportionment rule in section 589B(3) which applies if services are provided partly in and partly outside the United Kingdom. A similar condition, in section 589(1)(d) of ICTA, has been omitted from section 311 for the same reason. Removal of this condition aligns sections 310 and 311 with the exemptions in Chapter 4 of Part 4. See *Change 72* in Annex 1.

Section 311: Retraining courses

- 1299. This section provides there is no liability to income tax on payment or reimbursement of retraining course expenses when a person’s employment has ceased or is expected to cease.
- 1300. It derives from sections 588 and 589 of ICTA as they apply to an employee. The provisions of 588 and 589 as they apply to an employer do not change, other than to adopt the minor changes to the law made in this section. See paragraph 67 of Schedule 6.
- 1301. *Subsection (1)* provides the exemption and the conditions to be satisfied.
- 1302. *Subsection (2)* defines “retraining course expenses” for the purposes of the exemption.
- 1303. *Subsection (3)* sets out the course conditions.
- 1304. The section does not require a course to be undertaken “with a view to retraining the employee”. In practice a course is regarded as so undertaken if the conditions in the section are satisfied. This additional requirement is superfluous. See *Change 74* in Annex 1.
- 1305. To accord with Inland Revenue practice, the section also omits the condition in section 589(1)(d) of ICTA, that all teaching and practical application forming part of the course takes place in the United Kingdom. A similar condition, in section 589B(2)(e) of ICTA, has been omitted from section 310 for the same reason. Removal of this condition aligns sections 310 and 311 with the exemptions in Chapter 4 of Part 4. See *Change 72* in Annex 1.
- 1306. *Subsection (4)* sets out the employment conditions.
- 1307. Under the Employment Rights Act 1996, some events that involve a change in the identity of the employer are treated as not breaking the continuity of employment. The requirement that the employee be employed continuously for two years prior to retraining or, if earlier, when the employment ceased, is therefore expressed, as in section 310(4), in terms of the employment that is ceasing, not of employment by the employer.
- 1308. Expressing the requirement this way aligns sections 310 and 311 in their treatment of the same requirement. See *Change 71* in Annex 1.
- 1309. *Subsection (5)* sets out the conditions that relate to travelling expenses.

1310. As in section 310, travel expenses meeting this condition include expenses that, on the assumptions in subsection (6), would be deductible under any provision of Part 5. Under ICTA, expenses within the exemption are restricted to expenses deductible only under selected sections of those rewritten in that Part. See *Change 73* in Annex 1.
1311. This section is listed in section 332 (meaning of “the deductibility provisions”). Various provisions in Part 5 then ensure that certain rules in Part 5 do not adversely restrict expenses, deductible under that Part, for the purposes of subsection (5).
1312. *Subsection (6)* sets out the assumptions made in applying the condition in subsection (5) to travelling expenses. To accord with Inland Revenue practice, one of those assumptions is (as in section 310) that the expenses are incurred and paid by the employee. But the assumption that they are paid out of emoluments has not been rewritten. See *Change 81* in Annex 1.

Section 312: Recovery of tax

1313. This section provides machinery for an assessment to charge the amount due if exemption under section 311 has been given and there is a subsequent failure to meet certain of the conditions in section 311(4).
1314. It derives from section 588 of ICTA.
1315. *Subsection (1)* sets out the circumstances in which the section applies.
1316. *Subsection (2)* sets out what will be assessed if the section applies, and provides the mechanism for such an assessment.
1317. *Subsection (3)* provides the time limit for the making of such an assessment.
1318. *Subsections (4) to (6)* contain provisions which:
- require the employer or former employer to notify the Inland Revenue of a failure within the terms of subsection (1) to meet the conditions in section 311(4); and
 - permit the Inland Revenue to require information from a person they have reason to believe has failed to fulfil that requirement.

Chapter 11: Miscellaneous exemptions

Section 313: Repairs and alterations to living accommodation

1319. This section derives from section 155(3) of ICTA. It only applies in the case of provided accommodation which falls within Chapter 5 of Part 3.
1320. In the case of alteration and additions to the property within *subsection (2)(a)*, the cost would sometimes result in an increase in the cash equivalent under Chapter 5 of Part 3. In order to prevent a double charge to tax it is necessary to exempt the cost of the alterations and additions which fall through to Chapter 10 of Part 3 because the cost of provision was “not otherwise chargeable to tax”.
1321. The second part of this exemption at *subsection (2)(b)* refers to landlord’s repairs, the definition of which prevents it extending to tenant’s repairs, or improvements disguised as repairs.

Section 314: Council tax etc. paid for certain living accommodation

1322. This section derives from section 145(4) of ICTA. Without this section, a tax liability could still arise if charges in connection with the property were paid (or the cost reimbursed) by the employer.
1323. *Subsection (1)* applies the section when certain exceptions from a charge on living accommodation apply.

1324. *Subsection (2)* applies the exemption to a fuller and more updated description of domestic property charges: “council tax or rates, water or sewerage charges”, in line with Inland Revenue practice. This is a minor change to the law. See *Change 75* in Annex 1.

Section 315: Limited exemption for expenses connected with certain living accommodation

1325. This section limits the amount charged to tax in respect of certain expenditure (or reimbursement of expenditure by the employee) in connection with living accommodation. It derives from section 163 of ICTA. It applies to all employees whether in excluded employment or not whereas section 163 applies only to those employments within Chapter 2 of Part 5 of ICTA. This is a minor change in the law. See *Change 76* in Annex 1.
1326. *Subsections (2)* and *(3)* set out the conditions which must be satisfied for the exemption to apply.
1327. *Subsection (4)* provides a formula to calculate the amount to which the exemption is applied. The following example shows how the formula works, using NE, DA, DE and SMG as defined in the section.
1328. Assume an employee’s earnings are £10,000 a year (and there are no deductions) and no sums made good. The formula works to give the right pro-rata result for each of the following circumstances:
- Employment held and accommodation provided for whole year