



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART V

PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER II

SUPPLEMENTARY CHARGING PROVISIONS APPLICABLE TO DIRECTORS AND HIGHER-PAID EMPLOYEES AND OFFICE HOLDERS

Benefits in kind

154 General charging provision

- (1) Subject to section 163, where in any year a person is employed in director's or higher-paid employment and—
- (a) by reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and
 - (b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit.

- (2) The benefits to which this section applies are accommodation (other than living accommodation), entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection), excluding however—
- (a) any benefit consisting of the right to receive, or the prospect of receiving, any sums which would be chargeable to tax under section 149; and
 - (b) any benefit chargeable under section 157, 158, 160 or 162;

and subject to the exceptions provided for by section 155.

- (3) For the purposes of this section and sections 155 and 156, the persons providing a benefit are those at whose cost the provision is made.

155 Exceptions from the general charge

- (1) Where the benefit of a car is taxable under section 157, section 154 does not apply to any benefit in connection with the car other than a benefit in connection with the provision of a driver for the car.
- (2) Section 154 does not apply where the benefit consists in provision for the employee, in premises occupied by the employer or others providing it, of accommodation, supplies or services used by the employee solely in performing the duties of his employment.
- (3) Where living accommodation is provided by reason of a person's employment—
- (a) alterations and additions to the premises concerned which are of a structural nature, and
 - (b) repairs to the premises of a kind which, if the premises were let under a lease to which section 11 of the Landlord and Tenant Act 1985 (repairing obligations) applies, would be the obligation of the lessor under the covenants implied by subsection (1) of that section,
- are not benefits to which section 154 applies.
- (4) Section 154 does not apply to a benefit consisting in the provision by the employee's employer for the employee himself, or for the spouse, children or dependants of the employee, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the employee's death or retirement.
- (5) Section 154 does not apply to a benefit consisting in the provision by the employee's employer of meals in any canteen in which meals are provided for the staff generally.
- (6) Section 154 does not apply where the benefit consists—
- (a) in providing the employee with medical treatment outside the United Kingdom (including providing for him to be an in-patient) in a case where the need for the treatment arises while the employee is outside the United Kingdom for the purpose of performing the duties of his employment; or
 - (b) in providing insurance for the employee against the cost of such treatment in such a case;
- and for the purpose of this subsection, medical treatment includes all forms of treatment for, and all procedures for diagnosing, any physical or mental ailment, infirmity or defect.

156 Cash equivalents of benefits charged under section 154

- (1) The cash equivalent of any benefit chargeable to tax under section 154 is an amount equal to the cost of the benefit, less so much (if any) of it as is made good by the employee to those providing the benefit.
- (2) Subject to the following subsections, the cost of a benefit is the amount of any expense incurred in or in connection with its provision, and (here and in those subsections) includes a proper proportion of any expense relating partly to the benefit and partly to other matters.

- (3) Where the benefit consists in the transfer of an asset by any person, and since that person acquired or produced the asset it has been used or has depreciated, the cost of the benefit is deemed to be the market value of the asset at the time of transfer.
- (4) Where the asset referred to in subsection (3) above is not a car and before the transfer a person (whether or not the transferee) has been chargeable to tax in respect of the asset in accordance with subsection (5) below, the amount which under subsection (3) above is deemed to be the cost of the benefit shall (if apart from this subsection it would be less) be deemed to be—
 - (a) the market value of the asset at the time when it was first applied (by those providing the benefit in question) for the provision of any benefit for a person, or for members of his family or household, by reason of his employment, less
 - (b) the aggregate of the amounts taken into account as the cost of the benefit in charging tax in accordance with subsection (5) below in the year or years up to and including that in which the transfer takes place.
- (5) Where the benefit consists in an asset being placed at the employee's disposal, or at the disposal of others being members of his family or household, for his or their use (without any transfer of the property in the asset), or of its being used wholly or partly for his or their purposes, then the cost of the benefit in any year is deemed to be—
 - (a) the annual value of the use of the asset ascertained under subsection (6) below; plus
 - (b) the total of any expense incurred in or in connection with the provision of the benefit excluding—
 - (i) the expense of acquiring or producing it incurred by the person to whom the asset belongs; and
 - (ii) any rent or hire charge payable for the asset by those providing the benefit.
- (6) Subject to subsection (7) below, the annual value of the use of the asset, for the purposes of subsection (5) above—
 - (a) in the case of land, is its annual value determined in accordance with section 837; and
 - (b) in any other case is 20 per cent. of its market value at the time when it was first applied (by those providing the benefit in question) in the provision of any benefit for a person, or for members of his family or household, by reason of his employment.
- (7) Where there is payable, by those providing the benefit, any sum by way of rent or hire-charge for the asset, the annual amount of which is equal to, or greater than, the annual value of the use of the asset as ascertained under subsection (6) above, that amount shall be substituted for the annual value in subsection (5)(a) above.
- (8) From the cash equivalent there are deductible in each case under section 198, 201 or 332(3) such amounts (if any) as would have been so deductible if the cost of the benefit had been incurred by the employee out of his emoluments.
- (9) In the case of assets first applied before 6th April 1980 by those providing the benefit in question in the provision of any benefit for a person, or for members of his family or household, by reason of his employment—
 - (a) subsection (4) above shall not have effect; and

- (b) in subsection (6)(b) above for the words “20 per cent.” there shall be substituted the words “10 per cent.”.

157 Cars available for private use

- (1) Where in any year in the case of a person employed in director’s or higher-paid employment, a car is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—

- (a) it is so made available by reason of his employment and it is in that year available for his or their private use; and
 (b) the benefit of the car is not (apart from this section) chargeable to tax as the employee’s income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.

- (2) Subject to the provisions of this section, the cash equivalent of that benefit is to be ascertained—

- (a) from Tables A and B in Part I of Schedule 6, in the case of cars with an original market value of up to £19,250; and
 (b) from Table C in that Part in the case of cars with an original market value of more than that amount;

the equivalent in each case being shown in the second or third column of the applicable Table by reference to the age of the car at the end of the relevant year of assessment.

- (3) Where in any year the benefit of a car is chargeable to tax under this section as the employee’s income he shall not be taxable—

- (a) under Schedule E in respect of the discharge of any liability of his in connection with the car;
 (b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—
 (i) for obtaining money which is spent on goods or services in connection with the car; or
 (ii) for obtaining such goods or services;
 (c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the car.

- (4) The Treasury may by order taking effect from the beginning of any year beginning after it is made—

- (a) increase or further increase the money sum specified in subsection (2)(a) above;
 (b) with or without such an increase, substitute for any of the three Tables a different Table of cash equivalents;
 (c) increase or further increase the money sum specified in paragraph 1(1) of Part II of Schedule 6.

- (5) Part II of Schedule 6 has effect—

- (a) with respect to the application of the Tables in Part I; and
 (b) for the reduction of the cash equivalent under this section in cases where the car has not been available for the whole of the relevant year, or the use of it

has been preponderantly business use, or the employee makes any payment for the use of it.

158 Car fuel

- (1) Where in any year in the case of a person employed in director's or higher-paid employment fuel is provided by reason of his employment for a car which is made available as mentioned in section 157, an amount equal to whatever is the cash equivalent of that benefit in that year shall be treated as emoluments of the employment and, accordingly, shall be chargeable to income tax under Schedule E.
- (2) Subject to the provisions of this section, the cash equivalent of that benefit shall be ascertained from Table A below where the car has an internal combustion engine with one or more reciprocating pistons and from Table B below in the case of other cars; and for the purposes of Table A below a car's cylinder capacity is the capacity of its engine calculated as for the purposes of the Vehicles (Excise) Act 1971 or the Vehicles (Excise) Act (Northern Ireland) 1972.

TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£480
More than 1,400 but not more than 2,000	£600
More than 2,000	£900

TABLE B

<i>Original market value of car</i>	<i>Cash equivalent</i>
Less than £6,000	£480
£6,000 or more but less than £8,500	£600
£8,500 or more	£900

- (3) Without prejudice to the generality of subsection (1) above, fuel is provided for a car if—
 - (a) any liability in respect of the provision of fuel for the car is discharged;
 - (b) a non-cash voucher or a credit-token is used to obtain fuel for the car or money which is spent on such fuel;
 - (c) any sum is paid in respect of expenses incurred in providing fuel for the car.

In this subsection “non-cash voucher” and “credit-token” have the meanings given by section 141(7) and 142(4) respectively.

- (4) The Treasury may by order taking effect from the beginning of any year beginning after it is made substitute a different Table for either of the Tables in subsection (2) above.
- (5) Where paragraph 2 or 3 of Part II of Schedule 6 applies to reduce the cash equivalent of the benefit of the car for which the fuel is provided, the same reduction shall be made to the cash equivalent of the benefit of the fuel ascertained under subsection (2) above.

- (6) If in the relevant year—
- (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by him in or in connection with the provision of fuel for his private use and he does so; or
 - (b) the fuel is made available only for business travel;
- the cash equivalent is nil.

159 Pooled cars

- (1) This section applies to any car in the case of which the inspector is satisfied (whether on a claim under this section or otherwise) that it has for any year been included in a car pool for the use of the employees of one or more employers.
- (2) A car is to be treated as having been so included for a year if—
 - (a) in that year it was made available to, and actually used by, more than one of those employees and, in the case of each of them, it was made available to him by reason of his employment but it was not in that year ordinarily used by one of them to the exclusion of the others; and
 - (b) in the case of each of them any private use of the car made by him in that year was merely incidental to his other use of it in the year; and
 - (c) it was in that year not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.
- (3) Where this section applies to a car, then for the year in question the car is to be treated under sections 154 and 157 as not having been available for the private use of any of the employees.
- (4) A claim under this section in respect of a car for any year may be made by any one of the employees mentioned in subsection (2)(a) above (referred to below as “the employees concerned”) or by the employer on behalf of all of them.
- (5) On an appeal against the decision of the inspector on a claim under this section all the employees concerned may take part in the proceedings, and the determination of the body of Commissioners or county court appealed to shall be binding on all those employees, whether or not they have taken part in the proceedings.
- (6) Where an appeal against the decision of the inspector on a claim under this section has been determined, no appeal against the inspector’s decision on any other such claim in respect of the same car and the same year shall be entertained.

160 Beneficial loan arrangements

- (1) Where in the case of a person employed in director’s or higher-paid employment there is outstanding for the whole or part of a year a loan (whether to the employee himself or a relative of his) of which the benefit is obtained by reason of his employment and—
 - (a) no interest is paid on the loan for that year; or
 - (b) the amount of interest paid on it for the year is less than interest at the official rate,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit of the loan for that year.

- (2) Where in the case of a person employed in director's or higher-paid employment—
 - (a) there is in any year released or written off the whole or part of a loan (whether to the employee himself or a relative of his, and whether or not such a loan as is mentioned in subsection (1) above), and
 - (b) the benefit of that loan was obtained by reason of his employment,then there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to that which is released or written off.
- (3) Where there was outstanding at any time when a person was in director's or higher-paid employment the whole or part of a loan to him (or to a relative of his) the benefit of which was obtained by reason of his employment, and that director's or higher-paid employment has terminated, whether on the employee ceasing to be employed or ceasing to be employed in director's or higher-paid employment, subsection (2) above applies as if it had not terminated.
- (4) Part I of Schedule 7 has effect as to what is meant by the benefit of a loan obtained by reason of a person's employment; the cash equivalent of the benefit is to be ascertained in accordance with Part II of that Schedule; and Part III of that Schedule has effect for excluding from the operation of subsection (1) above loans on which interest is eligible for relief under subsection (1) of section 353 or which would be so eligible apart from subsection (2) of that section.
- (5) In this section, sections 161 and 162 and Schedule 7—
 - (a) "loan" includes any form of credit;
 - (b) references to a loan include references to any other loan applied directly or indirectly towards the replacement of the first-mentioned loan;
 - (c) references to making a loan include arranging, guaranteeing or in any way facilitating a loan (related expressions being construed accordingly); and
 - (d) references to the official rate of interest are to the rate prescribed from time to time by the Treasury by order.
- (6) For the purposes of this section and section 161, a person is a relative of another person if he or she is—
 - (a) the spouse of that other; or
 - (b) a parent or remoter forebear, child or remoter issue, or brother or sister of that other or of the spouse of that other; or
 - (c) the spouse of a person falling within paragraph (b) above.
- (7) Subject to section 161, this section applies to loans whether made before or after this Act is passed.

161 Exceptions from section 160

- (1) There is no charge to tax under section 160(1) if the cash equivalent does not exceed £200 or (for a year in which there are two or more loans outstanding) the total of all the cash equivalents does not exceed that amount.

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- (2) Where the amount of interest paid on a loan for the year in which it is made is not less than interest at the official rate applying for that year for the purposes of section 160 and the loan is made—
- (a) for a fixed and unvariable period; and
 - (b) at a fixed and unvariable rate of interest,
- subsection (1) of that section shall not apply to the loan in any subsequent year by reason only of an increase in the official rate since the year in which the loan was made.
- (3) Where a loan was made at any time before 6th April 1978—
- (a) for a fixed and unvariable period; and
 - (b) at a fixed and unvariable rate of interest,
- section 160(1) shall not apply to the loan if it is shown that the rate of interest is not less than such rate as could have been expected to apply to a loan on the same terms (other than as to the rate of interest) made at that time between persons not connected with each other (within the meaning of section 839) dealing at arm's length.
- (4) If the employee shows that he derived no benefit from a loan made to a relative of his, section 160(1) and (2) above shall not apply to that loan.
- (5) Section 160(2) does not apply where the amount released or written off is chargeable to income tax as income of the employee apart from that section, except—
- (a) where it is chargeable only by virtue of section 148; or
 - (b) to the extent that the amount exceeds the sums previously falling to be treated as the employee's income under section 677.
- (6) On the employee's death—
- (a) a loan within subsection (1) of section 160 ceases to be outstanding for the purposes of the operation of that subsection; and
 - (b) no charge arises under subsection (2) of that section by reference to any release or writing-off which takes effect on or after the death.
- (7) Section 160(2) does not apply to benefits received in pursuance of arrangements made at any time with a view to protecting the holder of shares acquired before 6th April 1976 from a fall in their market value.

162 Employee shareholdings

- (1) Where—
- (a) a person employed or about to be employed in director's or higher-paid employment ("the employee"), or a person connected with him, acquires shares in a company (whether the employing company or not); and
 - (b) the shares are acquired at an under-value in pursuance of a right or opportunity available by reason of his employment,
- section 160(1) and Schedule 7 apply as if the employee had the benefit of an interest-free loan obtained by reason of his employment ("the notional loan").
- (2) The provisions of this section have effect subject to sections 185 and 186; and in this section—
- (a) references to shares being acquired at an under-value are references to shares being acquired either without payment for them at the time or being acquired for an amount then paid which is less than the market value of fully paid up

- shares of that class (in either case with or without obligation to make payment or further payment at some later time); and
- (b) any reference, in relation to any shares, to the under-value on acquisition is a reference to the market value of fully paid up shares of that class less any payment then made for the shares.
- (3) The amount initially outstanding of the notional loan is so much of the under-value on acquisition as is not chargeable to tax as an emolument of the employee; and—
- (a) the loan remains outstanding until terminated under subsection (4) below; and
- (b) payments or further payments made for the shares after the initial acquisition go to reduce the amount outstanding of the notional loan.
- (4) The notional loan terminates on the occurrence of any of the following events—
- (a) the whole amount of it outstanding is made good by means of payments or further payments made for the shares; or
- (b) the case being one in which the shares were not at the time of acquisition fully paid up, any outstanding or contingent obligation to pay for them is released, transferred or adjusted so as no longer to bind the employee or any person connected with him; or
- (c) the shares are so disposed of by surrender or otherwise that neither he nor any such person any longer has a beneficial interest in the shares; or
- (d) the employee dies.
- (5) If the notional loan terminates as mentioned in subsection (4)(b) or (c) above, there is then for the year in which the event in question occurs the same charge to income tax on the employee, under section 160(2), as if an amount equal to the then outstanding amount of the notional loan had been released or written off from a loan within that section.
- (6) Where after 6th April 1976 shares are acquired, whether or not at an under-value but otherwise as mentioned in subsection (1) above, and—
- (a) the shares are subsequently disposed of by surrender or otherwise so that neither the employee nor any person connected with him any longer has a beneficial interest in them; and
- (b) the disposal is for a consideration which exceeds the then market value of the shares,
- then for the year in which the disposal is effected the amount of the excess is treated as emoluments of the employee's employment and accordingly chargeable to income tax under Schedule E.
- (7) If at the time of the event giving rise to a charge in relation to any shares by virtue of subsection (5) or (6) above the employee has ceased to be in the director's or higher-paid employment by virtue of which he is the employee for the purposes of this section in relation to those shares, those subsections shall apply as if he had not so ceased.
- (8) No charge arises under subsection (6) above by reference to any disposal effected after the death of the employee, whether by his personal representatives or otherwise.
- (9) This section applies in relation to acquisition and disposal of an interest in shares less than full beneficial ownership (including an interest in the proceeds of sale of part of the shares but not including a share option) as it applies in relation to the acquisition and disposal of shares, subject to the following modifications—

- (a) for references to the shares acquired there shall be substituted references to the interest in shares acquired;
 - (b) for the reference to the market value of the shares acquired there shall be substituted a reference to the proportion corresponding to the size of the interest of the market value of the shares in which the interest subsists;
 - (c) for the reference to shares of the same class as those acquired there shall be substituted a reference to shares of the same class as those in which the interest subsists; and
 - (d) for the reference to the market value of fully paid up shares of that class there shall be substituted a reference to the proportion of that value corresponding to the size of the interest.
- (10) In this section—
- (a) “shares” includes stock and also includes securities as defined in section 254(1);
 - (b) “acquisition” in relation to shares includes receipt by way of allotment or assignment or otherwise howsoever;
 - (c) any reference to payment for shares includes giving any consideration in money or money’s worth or making any subscription, whether in pursuance of a legal liability or not;
 - (d) “market value” has the same meaning as, for the purposes of the 1979 Act, it has by virtue of section 150 of that Act;
- and section 839 applies for the purposes of this section.
- (11) This section, in respect of any shares or any interest in shares, operates only to include an amount in emoluments so far as any amount corresponding to it, and representing the same benefit, does not otherwise fall to be so included under the Tax Acts.

163 Expenses connected with living accommodation

- (1) This section applies where, in the case of a person employed in director’s or higher-paid employment, living accommodation is provided by reason of the employment and, accordingly, a charge to tax would arise in his case under section 145 but for the case being one of those specified in subsection (4) of that section.
- (2) Where, by reason of expenditure incurred in one or more of the following, that is to say,—
- (a) heating, lighting or cleaning the premises concerned;
 - (b) repairs to the premises, their maintenance or decoration;
 - (c) the provision in the premises of furniture or other appurtenances or effects which are normal for domestic occupation;
- or by reason of such expenditure being reimbursed to the employee, an amount falls to be included in the emoluments of his employment, that amount shall not exceed the limit specified in subsection (3) below.
- (3) That limit is—
- (a) 10 per cent. of the net amount of the emoluments of the employment or, if the accommodation is provided for a period of less than a year, so much of that percentage of the net amount as is attributable to the period; less

- (b) where the expenditure is incurred by a person other than the employee, so much as is properly attributable to the expenditure of any sum made good by the employee to that other.
- (4) The net amount of the emoluments of a person's employment for the purposes of subsection (3) above is the amount of those emoluments (leaving out of account the expenditure in question) after—
- (a) any capital allowance; and
 - (b) any deductions allowable under section 198, 199, 201, 332(3), 592(7), 594 or 619(1)(a);
- and, for the purposes of this subsection, in the case of employment by a company there shall be taken into account, as emoluments of the employment, the emoluments of any employment by an associated company.
- (5) For the purposes of subsection (4) above, a company is an associated company of another if one of them has control of the other or both are under the control of the same person.

164 Director's tax paid by employer

- (1) Subject to the provisions of this Chapter, where in any year a person ("the recipient") is employed as a director of a company and—
- (a) a payment of, or on account of, income assessable to income tax under Schedule E as emoluments of that employment is made to him in circumstances in which the person making the payment is required, by regulations made under section 203, to deduct an amount of income tax on making the payment; and
 - (b) the whole of that amount is not so deducted but is, or any part of it is, accounted for to the Board by someone other than the recipient;
- the amount so accounted for to the Board, less so much (if any) as is made good by the recipient to that other person or so deducted, shall be treated as emoluments of the employment and accordingly chargeable to income tax under Schedule E.
- (2) A person shall not be treated, for the purposes of subsection (1) above, as employed as a director of a company if he has no material interest in the company and either paragraph (a) or paragraph (b) of section 167(5) is satisfied.
- (3) Where an amount treated as emoluments of a person's employment, by subsection (1) above, is accounted for to the Board at a time when the employment has come to an end, those emoluments shall be treated, for the purposes of the Income Tax Acts, as having arisen in the year in which the employment ended; but that subsection shall not apply in relation to any amount accounted for to the Board after the death of the director in question.

165 Scholarships

- (1) Nothing in section 331 shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from the charge to tax under section 154.
- (2) For the purposes of this Chapter, any scholarship provided for a member of a person's family or household shall, without prejudice to any other provision of this Chapter, be taken to have been provided by reason of that person's employment if it is provided

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under arrangements entered into by, or by any person connected with, his employer (whether or not those arrangements require the employer or connected person to contribute directly or indirectly to the cost of providing the scholarship).

(3) Section 154 does not apply to a benefit consisting in a payment in respect of a scholarship—

- (a) provided from a trust fund or under a scheme; and
- (b) held by a person receiving full-time instruction at a university, college, school or other educational establishment; and
- (c) which would not be regarded, for the purposes of this Chapter, as provided by reason of a person's employment were subsection (2) above and section 168(3) to be disregarded;

if, in the year in which the payment is made, not more than 25 per cent. of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in paragraph (b) above is attributable to relevant scholarships.

(4) This section does not have effect in relation to any payment if—

- (a) it is made in respect of a scholarship awarded before 15th March 1983, and
- (b) the first payment in respect of the scholarship was made before 6th April 1984; and
- (c) in relation to payments made after 5th April 1989, the person holding the scholarship is receiving full-time instruction at the university, college, school or other educational establishment at which he was receiving such instruction on—
 - (i) 15th March 1983, in a case where the first payment in respect of the scholarship was made before that date; or
 - (ii) the date on which the first such payment was made, in any other case.

(5) For the purposes of subsection (4)(c) above, a payment made before 6th April 1989 in respect of any period beginning on or after that date shall be treated as made at the beginning of that period.

(6) In this section—

- (a) “scholarship” includes an exhibition, bursary or other similar educational endowment;
- (b) “relevant scholarship” means a scholarship which is provided by reason of a person's employment (whether or not that employment is director's or higher-paid employment); and for the purposes of this definition
 “employment” includes an office or employment whose emoluments do not fall to be assessed under Schedule E but would fall to be so assessed if the employee were resident, and ordinarily resident, and all the duties of the employment were performed wholly, in the United Kingdom;

and section 839 applies for the purposes of this section.