

*These notes refer to the Income Tax (Earnings and Pensions)
Act 2003 (c.1) which received Royal Assent on 6th March 2003*

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Omitted material

Schedule 6: Consequential Amendments

General

Part 1: Income and Corporation Taxes Act 1988

Paragraph 2

3580. This paragraph substitutes a new section 1(1) of ICTA (the charge to income tax). As a result of the passing of this legislation the charge to income tax will consist in part of Schedules A, D and F, as set out in ICTA, and in part of the new categories of employment income, pension income and social security income for which this Act provides (together with other amounts which, under the Income Tax Acts, are charged to income tax).

Paragraph 4

3581. This paragraph amends section 9 of ICTA, which deals with the computation of income for corporation tax purposes, to reflect the repeal of Schedule E.

Paragraph 5

3582. This paragraph amends section 18 of ICTA so as to re-establish the boundary between income charged under this Act and income charged under ICTA.

3583. In section 18(1)(b) of ICTA the reference to Schedule E is replaced by a reference to the three types of income charged under this Act. This will include some pension and social security income that is charged under Schedule D by ICTA. The amendment ensures that the income is charged only under this Act. A similar amendment is made to the definition of Case VI.

3584. In the definition of Case V the phrase “income consisting of emoluments of any office or employment” is replaced by a general reference to “employment income”. Although the latter term covers both the charge on emoluments taxed by paragraph 1 of section 19(1) of ICTA and the free-standing Schedule E charges taxed by paragraph 5 of section 19(1), the amendment respects the principle that Schedule D is the residual Schedule. Despite using the broader term, Schedule D Case V still covers all of a person’s income from abroad except income that is specifically chargeable under other provisions.

Paragraph 6

3585. This paragraph provides for the repeal of section 19 of ICTA, which delineates the charge to income tax under Schedule E.

Paragraph 10

3586. This paragraph inserts three new sections (68A, 68B and 68C) into ICTA. The new sections, which are part of the SIP code, provide for a charge to income tax under Case V of Schedule D where an individual receives benefits under a SIP consisting of foreign cash dividends or dividend shares acquired with such dividends cease to be subject to the plan within three years of acquisition. The new sections derive from material in paragraphs 92 and 93 of Schedule 8 to FA 2000.

Paragraph 12

3587. This paragraph inserts a new section 85B (approved share incentive plans) into ICTA 1988. The purpose of the new section is to introduce Schedule 4AA into ICTA; and the contents of that new Schedule are set out in paragraph 109 of this Schedule.

Paragraph 16

3588. This paragraph amends section 138 of ICTA. That section has itself been repealed, but still applies in respect of shares acquired before 26 October 1987. The two amendments simply adopt appropriate new language for references to “Schedule E”.

Paragraph 22

3589. This paragraph provides for the omission of various provisions that are rewritten in this Act. Section 150(a) of ICTA taxes allowances paid under schemes set up under the Job Release Act 1977. The last Order authorising payments under the Job Release Act 1977 was [1987 SI 1339](#), which extended the effect of the Act to 29 September 1988. So this rule is spent and is not rewritten.

Paragraph 26

3590. This paragraph amends section 186 of ICTA which concerns approved profit sharing (“APS”) schemes.

3591. Section 49 of FA 2000 envisages the phasing out of APS schemes. (No new schemes can be approved after 6 April 2001 and the tax advantages cease for shares appropriated after 31 December 2002.) However, the legislation relating to APS schemes needs to be preserved for existing schemes; and the view has been taken that the better approach is to not repeal the APS legislation but to leave it in sections 186 and 187 of, and Schedules 9 and 10 to, ICTA. Those provisions which have continuing effect are being amended as necessary by this Schedule to reflect the new language introduced in this Act. Outdated references are not being amended where, for all realistic purposes, the provisions are spent.

3592. *Sub-paragraph (4)* amends section 186(5) of ICTA. The amendment is necessary because that provision looks backward and after 5 April 2003 will need to cover charges under both the old and new forms of section 186(3).

Paragraph 28

3593. This paragraph provides for the omission of various provisions that are rewritten in this Act. Section 191 of ICTA exempts some allowances paid under schemes set up under the Job Release Act 1977. The last Order authorising payments under the Job Release Act 1977 was [1987 SI 1339](#), which extended the effect of the Act to 29 September 1988. So this section is spent and is not rewritten.

Paragraph 34

3594. This paragraph inserts four new sections (251A, 251B, 251C and 251D) into ICTA. The four new sections, which, like sections 68A to 68C of ICTA (see paragraph 10 of this Schedule) are part of the SIP code, provide for charges to income tax under Schedule F where an individual receives benefits under a SIP consisting of UK cash dividends or dividend shares acquired with such dividends cease to be subject to the plan within three years of acquisition. The new sections also derive from material in paragraphs 92 and 93 of Schedule 8 to FA 2000.

Paragraph 36

3595. This paragraph derives from section 595(1)(b) of ICTA and related provisions in sections 595 and 596. The charge to tax in section 595(1)(a) and related provisions have been rewritten in Chapter 1 of Part 6 of the Act. The relief under section 595(1)(b) is being preserved by inserting a new section 266A into ICTA. Sections 595 and 596 of ICTA are being repealed.

Paragraph 44

3596. This paragraph amends section 322 of ICTA so that the section continues to include the foreign income that ICTA charges under Schedule D Case V but which this Act charges under the pension and social security income Parts.

Paragraph 47

3597. This paragraph amends section 332 of ICTA so that the section applies only in respect of deductions against the profits or fees of a minister of religion chargeable under Schedule D and expenses incurred in earning those profits or fees. Section 332(3) provides that particular expenses incurred in connection with an employment, profession or vocation as a minister are deductible from the profits or employment income of a minister. This amendment permits such expenses to be deducted in calculating Schedule D profits only if they relate to an appointment as a minister that is taxable under Schedule D and are incurred in earning those profits. See *Change 90* in Annex 1.

Paragraph 48

3598. This paragraph amends section 336 of ICTA so that the section continues to include the income that ICTA charges under Schedule D but which this Act charges under the pension and social security income Parts.

Paragraph 55

3599. This paragraph amends section 418 of ICTA. Most of the amendments are straightforward.

3600. The amendment to section 418(2)(a) is necessary because of the way the benefits code has been rewritten in this Act. The benefits code applies to all employees unless they are in “lower paid employment” as defined in section 217 of this Act. If they are in lower paid employment some Chapters of Part 3 are excluded from applying to them. The employments for which this exclusion does not apply are those within Chapter II of Part V of ICTA.

Paragraph 65

3601. This paragraph amends section 580A(7)(b) of ICTA. Section 580A exempts annual payments paid under certain types of ill health and employment risk insurance policy. Subsection (7) extends the exemption to income taxed under Schedule E if the payee pays or contributes to the premiums due under a policy taken out by another person on the payee’s behalf. This has been amended to refer to employment income and

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pension income. The effect of the amendment is that the exemption will apply to foreign pensions. See *Change 181* in Annex 1.

Paragraphs 67 to 70

3602. These paragraphs amend sections 588 to 589B of ICTA. These sections provided for an exemption from tax under Schedule E for retraining courses and outplacement counselling, which is rewritten at sections 310 to 312 in this Act. It is rewritten there with several minor changes (including removal of the requirement that the services in question should be provided in the United Kingdom). See *Change 72* in Annex 1.
3603. Sections 588 to 589B also provide for a deduction under Schedule D if the expenses incurred would not otherwise be deductible (sections 588(3) and 589A(8)). They also provide for the expenses to be allowed as expenses of an investment company on a similar basis to allowing for a Schedule D deduction.
3604. Paragraphs 67 to 69 amend those parts of section 588 to 589B that deal with the deduction for Schedule D/management expenses to tie in to the exemptions now contained in sections 310 to 312 of this Act.
3605. This approach allows those parts of sections 588 to 589B which deal with the Schedule E exemptions to appear only in this Act and not in ICTA.

Paragraphs 72 and 73

3606. These two paragraphs amend sections 592(7) and 594(1) of ICTA. Relief for contributions is now expressed as a deduction from employment income and there is a signpost to these provisions in section 327(5). See *Change 154* in Annex 1.

Paragraph 100

3607. This paragraph inserts two new sections (686B and 686C) into ICTA. The new sections, which like sections 68A to 68C of ICTA (see paragraph 10 of this Schedule) are part of the SIP code, provide that section 686 of ICTA (special rates of tax for accumulation and discretionary trusts) has only a limited application to dividend income received by the trustees of an approved SIP. The two new sections derive from paragraph 88 of Schedule 8 to FA 2000.

Paragraph 108

3608. This paragraph amends section 833 of ICTA. The amendments to subsections (4) and (5) of the section concern earned income.
3609. The concept of earned income is nearly obsolete, the last general use for it being to identify a wife's earned income before independent taxation was introduced in 1990. But the concept has a continuing relevance to retirement annuity relief (section 623 of ICTA) and personal pension relief (section 644 of ICTA).
3610. All the remuneration and pensions listed in paragraph (a) of subsection (4) of section 833 are charged to tax under the Act.
3611. All the pensions, annuities and social security payments listed in paragraphs (a) to (d) of subsection (5) of section 833 are charged to tax under the Act.
3612. So the two lists are replaced by a single reference to the Act.
3613. But the Act charges two sorts of income that are not earned income in section 833. These are:
- returned surplus employee additional voluntary contributions (charged under Schedule D Case VI in ICTA); and

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- jobseeker's allowance (charged under section 151A of ICTA, which is not mentioned in paragraph (c) of subsection (5) of section 833).

Paragraph 109

3614. This paragraph inserts a new Schedule 4AA into ICTA. The new Schedule, which like sections 68A to 68C of ICTA (see paragraph 10 of this Schedule) is part of the SIP code, deals with corporation tax deductions relating to the setting up and administration of an approved SIP. The new Schedule has 13 paragraphs, which derive from Part 11 (paragraphs 105 to 114) of Schedule 8 to FA 2000. In the new Schedule 4AA, paragraphs 4(9), 9, 10 and 12 derive from provisions inserted in Schedule 8 to FA 2000 by the Employee Share Schemes Act 2002 with effect from 6 April 2003.
3615. The new Schedule 4AA is introduced by the new section 85B of ICTA (see paragraph 12 of this Schedule). Section 85B falls within Part 4 of ICTA; and in this way the definition of the expression "investment company" in section 130 of ICTA will apply to the new Schedule (see *Note 70* in Annex 2).

Paragraphs 112 and 113

3616. These paragraphs amend and preserve Schedules 9 and 10 to ICTA in relation to approved profit sharing schemes. The retention of this legislation is referred to in the notes on paragraph 26.
3617. The amendments are those necessary to reflect the new language introduced in this Act.