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 7: Transitionals and Savings

Part 3: Employment income: earnings and benefits etc. treated as earnings

Paragraph 15

3658. This paragraph preserves the effectiveness of notifications made before 6 April 2003 for tax years beginning on or after that date. It carries forward the transitional provisions in section 166 of ICTA. It also deals with the change in terminology between the source legislation and this Act where, in the latter, the notification is called a "dispensation". That reflects the commonly used description of the notification. The provisions in the following paragraph may modify the scope of those dispensations.

Paragraph 16

3659. This paragraph modifies the effect of any dispensation that was in force before 6 April 2002 to preserve the modifications that were made to such dispensations by section 58 of FA 2001. Those modifications arose from the enactment of the provisions for mileage allowance payments and mileage allowance relief. From that date any element in a pre-existing dispensation relating to payments made, or benefits or facilities provided, in respect of expenses incurred in connection with the use of a vehicle by an employee for business travel was revoked. This paragraph ensures that such a revocation is retained in the operation of the dispensation on and after 6 April 2003.

Paragraph 17

3660. Section 168(2) of ICTA applies the provisions of Chapter 2 of Part 5 of that Act only to an employment the emoluments of which fall to be assessed under Schedule E. That proviso is also imported into the rules for living accommodation by section 145(8)(b). A similar proviso is contained in section 144(5) of ICTA for vouchers and credit-tokens.

3661. The concept of an employment the emoluments of which fall to be assessed under Schedule E has been reproduced for the purposes of the benefits code in this Act as "a taxable employment under Part 2", defined in section 66(3). In cases where it is necessary to consider whether there is a "taxable employment" before 6 April 2003, paragraph 17 of this Schedule explains how to translate this concept back into the rules in ICTA from which it derives.

Paragraph 18

3662. The general transitional provision for "employment" and related expressions in paragraph 17 does not provide the correct continuity for the use of employment in section 89(1)(c). This paragraph provides the correct replacement terms to ensure continuity.

Paragraph 19

3663. This paragraph concerns notices under section 144(1) of ICTA. It preserves the effectiveness of existing notifications (described as "dispensations" in this Act), subject to the modifications in paragraph 20.

Paragraph 20

3664. This paragraph derives from section 58 of FA 2001. It preserves the modifications that those provisions make to the effectiveness of existing notifications to take account of the introduction of mileage allowance payments and mileage allowance relief.

Paragraph 21

3665. This paragraph derives from section 146(8) of ICTA, which disapplies section 146(6) in cases where the employee first occupied the living accommodation in question before 31 March 1983.

Paragraphs 22

3666. This paragraph deals with capital contributions made by an employee before 6 April 2003 towards the cost of a car, other than a classic car (as dealt with in section 147) or accessories attached to it. The paragraph ensures that those contributions continue to be taken into account in calculating the cash equivalent of the benefit of the car for appropriate tax years beginning on or after that date. The paragraph also deals with changes in terminology between the source legislation and this Act.

Paragraph 23

3667. This paragraph deals with capital contributions made by an employee before 6 April 2003 towards the cost of a classic car (as dealt with in section 147) or accessories attached to it. The paragraph ensures that those contributions continue to be taken into account in calculating the cash equivalent of the benefit of the car for appropriate tax years beginning on or after that date. The paragraph also deals with changes in terminology between the source legislation and this Act.

Paragraph 24

3668. This paragraph deals with the consequences of the changes in terminology between the source legislation and this Act where a van is available to only one employee for a period exceeding 30 days that straddles 6 April 2003. The paragraph ensures that the relevant provisions apply irrespective of that employee's level of earnings ("emoluments" in the source legislation language).

Paragraph 25

3669. *Sub-paragraph (1)* ensures that loans may be employment-related regardless of when they were made, even if that was before FA 1976 (which introduced the beneficial loans provisions) was passed. It derives from section 160(7) of ICTA.

3670. *Sub-paragraph (2)* derives from section 161(7) of ICTA. It has the effect that the provisions of section 188 which apply to "stop loss" arrangements do not apply in the case of a holding of shares acquired before 6 April 1976.

Paragraph 26

3671. This paragraph deals with the change described in *Change 28* in Annex 1 (using Y for the number of days in the tax year in place of 365 days). It prevents the change applying where section 183 applies in relation to section 177 (the fixed rate loan exception) in the case of loans made in a leap year and before 6 April 2003.

Paragraph 27

3672. The charge to tax under section 188 may be in respect of a loan made before 2003-04. This paragraph deals with the fact that this Act changes the terminology used to describe the beneficial loan arrangements and the charge to tax on them, so that a loan made before 2003-04 may be an employment-related loan.

Paragraph 28

3673. This paragraph, deriving from section 162(1) of ICTA makes it clear that Chapter 8 of Part 3 of this Act applies only in relation to shares acquired after 6 April 1976.

Paragraph 29

3674. This paragraph ensures continuity of the law in respect of events prior to 6 April 2003.

3675. *Sub-paragraphs (2)and (3)* provide the continuity of the law in the case of an acquisition of shares prior to 6 April 2003 which gave rise to a notional loan within section 162(1) of ICTA. The amount of the notional loan initially outstanding remains the amount under section 162(1) and is to be used to arrive at the amount of the notional loan outstanding at any subsequent time after 6 April 2003. in accordance with section 194(3).

3676. *Sub-paragraph (4)* translates the reference in section 195(3)(c) to "excluded employment" to the term "an employment to which Chapter 2 of Part 5 of ICTA applies" in the case of a notional loan which first arose before 6 April 2003.

Paragraph 30

3677. This paragraph, deriving from section 162(6) of ICTA, makes it clear that Chapter 9 of Part 3 of this Act applies only in relation to shares acquired after 6 April 1976.

Paragraph 31

3678. The charge to tax under section 199 of this Act may be in respect of a loan made before the tax year 2003-04. This paragraph translates the reference in section 199(4)(b) to "excluded employment" to the term "an employment to which Chapter 2 of Part 5 of ICTA applies" in the case where the shares were acquired before 6 April 2003.

Paragraph 32

3679. *Sub-paragraph (2)* makes sure that the reference in section 206 of this Act to the cost of a benefit includes the cost of any benefit determined under section 156(5) of ICTA.

3680. *Sub-paragraph (3)* prevents the provisions by which the cash equivalent of the benefit of certain scholarships is chargeable to tax as earnings from applying to scholarships awarded before section 165 of ICTA came into effect in 1983.