

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 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.

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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.

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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.

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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:

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- 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);

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- 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

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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.