

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading income

Overview

Chapter 9: Trade profits: other specific trades

Overview

484. This Chapter contains special rules for the taxation of particular trades.

Section 128: Taxation of amounts taken to reserves

485. This section contains a special rule for the treatment of securities held by a company carrying on a banking or insurance business, or a business of dealing in securities, and on which profits and losses are calculated by reference to the “fair value” of the securities rather than on a realisation basis. It is based on section 472A of ICTA. The corresponding rule for income tax is in section 149 of ITTOIA.

486. Financial assets can be dealt with in a number of ways for accounting purposes.

487. Where a company dealing in securities uses United Kingdom generally accepted accountancy practice (“UK GAAP”), profits and losses calculated by reference to the fair value of securities treated as trading assets are taken to profit and loss account. “Fair value” is an accounting term, the meaning of which is broadly equivalent to market value. UK GAAP is defined in section 50(4) of FA 2004.

488. Where a company dealing in securities prepares accounts in accordance with international accounting standards, the securities would usually fall to be accounted for as at fair value, in accordance with paragraph 9 of International Accounting Standard 39 (“IAS 39”), and any profits and losses calculated by reference to the fair value of securities taken to the profit and loss account. But the company may instead account for certain securities as “available for sale” if they do not meet the conditions for being treated as at fair value through profit or loss. In such a case profits and losses calculated by reference to the fair value of securities are taken initially to a statement of changes in equity.

489. Since 2005, UK GAAP in this area follows IAS 39. Under UK GAAP the profits and losses on “available for sale” assets are taken to the statement of total recognised gains and losses.

490. **Section 46** of this Act provides that the calculation of profits or losses from a trade must be based on accounts drawn up in accordance with generally accepted accountancy practice, subject to any adjustment authorised by law. Implicit in this rule is that the profits must appear in the profit and loss account. There is no tax law (apart from this

section) which allows profits on equity securities taken to any form of reserve to be treated for corporation tax purposes as if they were taken to profit and loss account.

491. *Subsection (3)(b)* provides that subsection (2) does not apply to “an amount recognised for accounting purposes by way of correction of a fundamental error”. This refers to the requirement in International Accounting Standard 8 (Accounting Policies, Changes in Accounting Estimates and Errors) that the correction of a fundamental error should be treated as a prior period adjustment. “For accounting purposes” is defined in section 832(1) of ICTA as “for the purposes of accounts drawn up in accordance with generally accepted accounting practice”.
492. Section 472A(4)(a) of ICTA defines “securities” to include rights, interests or options treated as shares for the purposes of sections 126 to 136 of TCGA by virtue of sections 135(5) or 136(5) of TCGA. Sections 135(5) and 136(5) of TCGA define “shares” in the case of a company with no share capital as “any interests in the company possessed by members of the company.” So *subsection (4)(c)* of this section defines “securities” to include such interests.

Section 129: Conversion etc of securities held as circulating capital

493. This section provides for relief on the conversion or exchange of securities held as part of the circulating capital of a company dealing in securities. It is based on section 473 of ICTA. The corresponding rule for income tax is in section 150 of ITTOIA.
494. Section 473(1) of ICTA applies to securities to which a company carrying on a banking or insurance business, or a business of dealing in securities, is beneficially entitled, the profits from the sale of which would “form part of the trading profits of that business”. This section does not stipulate that the company must be beneficially entitled to the securities in question. See *Change 33* in Annex 1.
495. *Subsection (3)* excludes securities brought into account at “fair value” in calculating the profits for the period in which the relevant transaction takes place. These are instead dealt with in section 128.
496. Section 137(1) of TCGA provides that sections 135 and 136 of TCGA do not apply to an exchange of shares unless the exchange is:
- effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.
497. *Subsection (7)* of this section adapts the rule in section 137(1) of TCGA to include the avoidance of income tax. This covers, for example, a scheme or arrangement the purpose of which is the avoidance of income tax by a director of, or participator in, the company rather than the avoidance of corporation tax by the company itself.

Section 130: Traders receiving distributions etc

498. This section provides that distributions of a UK resident company, and payments “representative of” such distributions, are brought into account in calculating the profits of a trade if those distributions and payments are receipts or expenses of the trade on first principles. It is based on section 95 of ICTA. The corresponding rule for income tax is in section 366(1) of ITTOIA.
499. A payment “representative of” a distribution may arise, for example, if shares are on loan at the dividend date. The dividend is received by the person to whom the shares are lent. A payment made by that person to compensate the lender for the dividend which would have been received if the shares had not been lent “represents” that dividend.
500. Section 95 of ICTA operates by bringing the distribution or representative payment into account in calculating the profits of a company which is a dealer in relation to

that distribution or payment. That company holds the shares in respect of which the distribution is received (or the payment made) as assets on current account rather than as investments.

501. *Subsections (1) and (2)* focus on the nature of the receipt rather than on the recipient. Similarly, *subsections (3) and (4)* focus on the nature of the payment. See *Change 34* in Annex 1.
502. **Section 1285** of this Act is the general rule that no liability to corporation tax arises on dividends or other distributions of a UK resident company. Subsection (2) of this section disapplies section 1285 in the case of a UK distribution or a payment representing such a distribution.
503. **Section 1305** of this Act is the general rule that no deduction is allowed in respect of a dividend or other distribution. Schedule 23A to ICTA contains special rules for the treatment of amounts representative of dividends on UK shares. In accordance with paragraph 2(2)(b) of Schedule 23A, a payment representative of a UK dividend is treated, in relation to the company by which it is paid, as if it were a dividend on its own shares.
504. Subsections (3) and (4) override section 1305. So a payment representative of a UK distribution is to be taken into account in calculating the corporation tax profits of the company making the payment.
505. Subsection (3) applies to a payment which would be allowed but for section 1305. A payment in respect of which a deduction is disallowed under paragraph 7A of Schedule 23A of ICTA is not within subsection (3). So it is not necessary to rewrite section 95(1C) ICTA in this section.

Section 131: Incidental costs of issuing qualifying shares

506. This section allows a deduction to building societies for the incidental costs of issuing shares. It is based on section 477B of ICTA.
507. Most shares issued by building societies fall with the loan relationship rules in Parts 6 and 7 of this Act. This is because they are excluded from the definition of “share” in section 476(1) of this Act. The result is that most of the incidental costs associated with the issue of the shares are relieved under section 307 of this Act.
508. But it is possible for some building society shares not to qualify as loan relationships. And, even if they do, some incidental costs may not fall within section 307. So this section deals with the costs that are not relieved under the loan relationship rules.

Section 132: Dividends etc granted by industrial and provident societies

509. This section ensures that a “divi” paid by an industrial and provident society is allowed as a trading deduction. It is based on section 486 of ICTA.
510. The main rules about industrial and provident societies are in Chapter 5 of Part 6 of this Act (loan relationships).
511. A definition of “registered industrial and provident society” is inserted into section 834(1) of ICTA (see Schedule 1).
512. *Subsection (1)* sets out the sort of society to which the section applies. An example is an agricultural co-operative that sells (or buys) on behalf its farming members.
513. *Subsection (2)* is the trading income rule. In practice it is likely that the payments with which the section is concerned would be allowable under the normal trading income rule. But this section puts the matter beyond doubt.

514. The source legislation refers to the calculation of any profits “for the purpose of any provision of the Tax Acts relating to profits chargeable under Case I of Schedule D”. It is probable that the quoted words, read with sections 21A and 21C of ICTA, apply the rule for the purpose of a calculation of Schedule A profits. But, in the context of a property business, a “divi” is not paid “on account of the recipient’s transactions with the society”. So in practice the rule does not apply to a property business and the section refers simply to calculating the profits of the trade.
515. *Subsection (5)* is a signpost to the rule (inserted into ICTA by Schedule 1) that the “divi” is not a distribution.

Section 133: Annual payments paid by a credit union

516. This section denies a trading deduction for an annual payment made by a credit union. It is based on section 487 of ICTA.
517. Most credit unions do not carry on a trade for tax purposes. This is the consequence of section 40. But it is possible that some of the activities of a credit union fall outside the scope of the rule in that section. In that case, a calculation of the profits of the trade is required.
518. It is also possible that a credit union carries on a property business. So section 210(2) applies the trading income rule to property businesses.

Section 134: Purchase or sale of woodlands

519. This section applies to a person carrying on a trade of dealing in land who buys and sells land on which trees are growing. It is based on section 99 of ICTA. The corresponding rule for income tax is in section 156 of ITTOIA.
520. Any profit on the sale of the trees and underwood is tax-free because of the exemption for the occupation of commercial woodlands. See section 37 of this Act. *Subsection (2)* prevents the dealer in land obtaining a trade deduction for that part of the cost of the land that is attributable to the cost of the trees.
521. The legislation rewritten by subsection (2) only applies to woodlands purchased under a contract entered into on or after 1 May 1963. This limitation is preserved in Schedule 2 (transitions and savings). The corresponding provision for income tax is paragraph 42 of Schedule 2 to ITTOIA.

Section 135: Relief in respect of mineral royalties

522. This section gives relief if trade receipts include mineral royalties. It is based on section 122 of ICTA. The corresponding rule for income tax is in section 157 of ITTOIA.
523. Most mineral royalties are taxed under Chapter 7 of Part 4 of this Act. That Chapter rewrites the charge under Schedule D Case VI if rents are received from a concern listed in section 55 of ICTA. That list includes mines and quarries. In nearly all cases the rents are taxed under Chapter 7 of Part 4 of this Act as they are not received in respect of a trade. But it is possible that the receipt of the rent will be incidental to a trade. In that case section 287 of this Act provides that the rent is taxed under Part 3 of this Act. This is only likely to happen if the rent is received by a property developer in respect of land held as trading stock.
524. The mineral royalties are halved. The relief is rewritten under the italicised heading “dealers in land” because they are the traders who are most likely to benefit from the relief. But the relief is not confined to dealers in land.

Section 136: Lease premiums etc: reduction of receipts

525. This section prevents a person, carrying on a trade of dealing in land, from being taxed on all or part of a lease premium, or of certain other amounts received in respect of a lease, both as a receipt of the trade under this Part and as a receipt of a property business under Part 4 of this Act. It is based on section 99(2) and (3) of ICTA. The corresponding rule for income tax is in section 158 of ITTOIA.

Section 137: Mineral exploration and access

526. This section deals with intangible drilling costs of production wells in the oil and gas industry. It is based on section 91C of ICTA. The corresponding rule for income tax is in section 161 of ITTOIA.
527. Intangible costs are those which do not result in the acquisition or creation of machinery or plant. An example would be the cost of hiring a drilling rig. Production wells are wells that are drilled after the presence of oil in an area has been established and which are used to extract the oil.
528. Before the enactment of section 91C of ICTA, a deduction was allowed for the intangible drilling costs of the second and subsequent production wells in any area. This reflected a Special Commissioners decision in 1920 that this expenditure is of a revenue nature. This section disallows a deduction for such costs. It does this by denying a deduction for expenditure which, if it had been carried out while exploring for oil, would not have been allowed as a deduction.
529. These costs are capital expenditure and qualify for mineral extraction capital allowances (see Part 5 of CAA).

Section 138: Payments by companies liable to pool betting duty

530. This section gives a special deduction to companies which pay pool betting duty. It is based on those parts of section 126 of FA 1990 and section 121 of FA 1991 which relate to the calculation of the profits of traders. The corresponding rule for income tax is in section 162 of ITTOIA.
531. In 1990, following the Hillsborough disaster, pool betting duty was reduced on condition that the money saved be paid to the Football Trust 1990 to implement Lord Justice Taylor's recommendations on safety and comfort at football grounds. In 1991 the duty was reduced again, this time on condition that the money be paid to the Foundation for Sport and the Arts, a charitable trust which supports athletic sports and games and promotes the arts. The reductions were initially for a limited period, but have so far been maintained.
532. *Subsection (1)* sets out the circumstances in which the section applies. It introduces the expression "qualifying payment".
533. *Subsection (2)* defines a "qualifying payment" to which the section applies. It does not specify that payments in consequence of the 1990 reduction in pool betting duty must be paid for football safety and comfort, and that payments in consequence of the 1991 reduction must be paid to the Foundation for Sport and the Arts. Instead the section applies to a payment for either purpose in consequence of any reduction in pool betting duty. See *Change 35* in Annex 1.
534. The section retains a general description of the payments, without identifying the bodies which were the targets of the original legislation. It is clear that payments made as a consequence of a reduction in pool betting duty to either body would qualify for relief under the section.

535. The source legislation is restricted to the 1990 and 1991 reductions in pool betting duty. This section applies to payments made in consequence of any reduction in the duty. See *Change 36* in Annex 1.
536. *Subsection (3)* is the rule that allows the payments as a trading deduction. Without this rule the payments might be disallowed because they are not made wholly and exclusively for the purposes of the company's trade.

Section 139: Deduction for deemed employment payment

537. This section sets out the trading income rules that were originally part of the "IR35" scheme for the taxation of workers supplied by an intermediary. It is based on paragraph 17 of Schedule 12 to FA 2000. The corresponding rule for income tax is in section 163 of ITTOIA.
538. The worker is treated as receiving a "deemed employment payment" and is taxed accordingly (see Chapter 8 of Part 2 of ITEPA). This section ensures that an equivalent amount is allowed as a trading deduction in calculating the profits of the intermediary.
539. *Subsection (3)* is a timing rule. Generally, the deemed employment payment is treated as made at the end of the tax year (see section 50(3) of ITEPA). In some circumstances the payment is treated as made earlier (see section 57 of ITEPA). In either case, the trading deduction is given for the period of account in which the payment is treated as made.
540. *Subsection (4)* is the rule that prevents any double deduction. It caters for the possibility that the payment may qualify as a trading deduction on first principles and also qualify as a trading deduction in a period of account different from that specified in subsection (3).

Section 140: Special rules for partnerships

541. This section sets out two additional rules that apply if a deduction under section 139 is to be given in calculating the trading profits of a firm. It is based on paragraph 18 of Schedule 12 to FA 2000. The corresponding rule for income tax is in section 164 of ITTOIA.
542. [Section 1257](#) of this Act explains that "firm" is used in this Act to refer to persons carrying on a trade in partnership. It includes a limited liability partnership (see section 1273).
543. *Subsection (2)* is the rule that a deduction under section 139 of this Act cannot be used to create a loss in a firm. It operates by reference to the firm's period of account. See *Change 37* in Annex 1.
544. *Subsection (3)* is the rule that limits the trading deduction to the amount that would have been deductible if the worker had been an employee of the intermediary, plus a margin to cover the expenses of the firm.
545. In accordance with paragraph 244 of Schedule 6 to ITEPA, "deemed Schedule E payment" in paragraph 18 of Schedule 12 to FA 2000 is replaced by "deemed employment payment". Similarly, in the same paragraph, "Schedule E" is replaced by "the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003".
546. But the specific statutory references, such as those to "paragraph 7" (of Schedule 12 to FA 2000), are covered by the general rule in paragraph 5 of Schedule 7 to ITEPA. That general rule is that any reference to a repealed provision is to be read as a reference to the rewritten provision.
547. Paragraph 7 of Schedule 12 to FA 2000 has been repealed and rewritten as section 54(1) of ITEPA. So the reference to that paragraph in paragraph 18 of Schedule 12 is to be read as a reference to section 54(1) of ITEPA. This section updates the references to paragraph 7.

Section 141: Deduction for deemed employment payments

548. This section gives a trading deduction if a managed service company (“MSC”) makes a “deemed employment payment” to a worker under section 61D of ITEPA. It is based on paragraph 10 of Schedule 3 to FA 2007. The corresponding rule for income tax is in section 164A of ITTOIA.
549. The worker is treated as receiving a “deemed employment payment” and is taxed accordingly (see Chapter 9 of Part 2 of ITEPA). This section ensures that an equivalent amount (and no more) is allowed as a trading deduction in calculating the profits of the MSC.
550. *Subsection (5)* prevents any double deduction. It caters for the possibility that the payment may qualify as a trading deduction on first principles and also qualify as a trading deduction in a period of account different from that specified in subsection (3).

Section 142: Deduction for site preparation expenditure

551. This section sets out the rules for expenditure on preparing a site so that it can be used for waste disposal. It is the first of four sections that deal with waste disposal. They are based on sections 91B and 91BA of ICTA. The corresponding rules for income tax are in sections 165 to 168 of ITTOIA.
552. This section covers expenditure which is not deductible because it is capital and which is not eligible for capital allowances; in other words, expenditure that would otherwise go unrelieved for corporation tax purposes.
553. *Subsection (1)* introduces the concept of waste materials being deposited on a “waste disposal site”, an expression defined in section 144.
554. *Subsection (2)* is the link to section 143, which calculates the amount of expenditure that is allowed as deduction.
555. A deduction under section 91B of ICTA is allowed only if the company makes a claim (in such form as the Commissioners for HMRC may direct) and submits such plans and other documents (if any) as the Commissioners may require. This section drops the requirement for a claim. See *Change 38* in Annex 1.
556. *Schedule 2* to this Act rewrites the transitional provision in section 91BA(1) of ICTA. Expenditure cannot be “inherited” if the site changed hands before March 2000.
557. *Subsection (4)* treats the company’s trade as the same as that of its predecessor. This is necessary because the activities taken over may amount to less than the whole of the predecessor’s trade (see subsection (3)(a)).

Section 143: Allocation of site preparation expenditure

558. This section spreads site preparation expenditure over the useful life of the site. It is based on section 91B of ICTA. The corresponding rule for income tax is in section 166 of ITTOIA.
559. Some waste disposal sites, notably in the nuclear waste industry, have preparation expenditure dating from before 6 April 1989. So this section preserves the rules for the pre-1989 expenditure.

Section 144: Site preparation expenditure: supplementary

560. This section contains the definitions of the expressions used in the waste disposal sections and sets out the rules for pre-trading expenditure. It is based on sections 91A, 91B and 91BA of ICTA. The corresponding rule for income tax is in section 167 of ITTOIA.

561. Although the definitions are expressed to apply “for the purposes of sections 142 and 143”, the definition of “waste disposal licence” is also used to define a “site restoration payment” in section 145(5).
562. In *subsection (1)(b)* the corresponding Northern Ireland provision is Part 2 of the [Waste and Contaminated Land \(Northern Ireland\) Order 1997 \(SI 1997/2778 \(N.I.19\)\)](#).
563. *Subsection (1)(c)* identifies more specifically the provisions described in section 167(1) (c) of ITTOIA. It reflects the amendments to section 91A(6) of ICTA made by:
- the [Pollution Prevention and Control \(England and Wales\) Regulations \(SI 2000/1973\)](#);
 - the [Pollution Prevention and Control \(Scotland\) Regulations \(SI 2000/323\)](#); and
 - paragraph 3 of Schedule 11 to the [Pollution Prevention and Control Regulations \(Northern Ireland\) 2003 \(SR 2003/46\)](#).

Section 145: Site restoration payments

564. This section deals with payments for the restoration of a site after it has been used for waste disposal. It is based on section 91A of ICTA. The corresponding rule for income tax is in section 168 of ITTOIA.
565. In *subsection (6)(a), (c) and (d)* the corresponding Northern Ireland provision is Article 40 of the [Planning \(Northern Ireland\) Order 1991 \(SI 1991/1220 \(N.I. 11\)\)](#).

Section 146: Cemeteries and crematoria: introduction

566. This section, and the following three sections, contain special rules for companies carrying on a trade of operating a cemetery or crematorium. They are based on section 91 of ICTA. The corresponding rules for income tax are in sections 169 to 172 of ITTOIA.
567. Without special provisions, no allowance would be due for the cost of land sold for interments, memorial gardens attached to crematoria or the surrounding land and buildings because expenditure on such land and buildings is in the nature of capital. The provisions in sections 146 to 149 recognise that most land and buildings in a cemetery or memorial garden are of little value when the cemetery or memorial garden is full.
568. This section introduces the provisions in sections 147 to 149 and defines some of the terms used in those sections.
569. Section 91(7)(a) of ICTA adapts the rules for cemeteries in section 91 of ICTA to crematoria and treats “land which is devoted wholly to memorial garden plots” as a cemetery, or as land in a cemetery. *Subsection (1)* of this section instead includes the carrying on of a crematorium, and the maintenance of “memorial gardens plots” in the trades to which sections 146 to 149 apply.
570. Section 91(5) of ICTA provides that a change of ownership is ignored in calculating the relief due to the person then carrying on the trade. So *subsection (4)* of this section includes expenditure incurred by “a predecessor” of the company carrying on the trade in the definition of ancillary capital expenditure.

Section 147: Deduction for capital expenditure

571. This section provides for a deduction for certain capital expenditure incurred by the trader or a predecessor. It is based on section 91 of ICTA. The corresponding rule for income tax is in section 170 of ITTOIA.
572. Section 91 of ICTA refers to “land” in a cemetery or crematorium. *Subsection (1)* refers instead to “an interest in” such land. This accommodates better the possibility that

operators of cemeteries and crematoria might sometimes hold land in leasehold rather than in freehold form.

Section 148: Allocation of ancillary capital expenditure

573. This section contains special rules for allocating ancillary capital expenditure to a period of account. It is based on section 91 of ICTA. The corresponding rule for income tax is in section 171 of ITTOIA.
574. See section 146(4) for the definition of “ancillary capital expenditure”.

Section 149: Exclusion of expenditure met by subsidies

575. This section excludes certain expenditure for the purposes of section 147. It is based on section 91 of ICTA which applies the provisions of section 532 of CAA for the purposes of section 91 of ICTA. The corresponding rule for income tax is in section 172 of ITTOIA.
576. *Subsection (3)* refers to a grant made under Northern Ireland legislation and declared by the Treasury to correspond to a grant under Part 2 of the Industrial Development Act 1982. The term “Northern Ireland legislation” is defined by Schedule 1 to, and section 24(5) of, the Interpretation Act 1978.
577. The [Capital Allowances \(Corresponding Northern Ireland Grants\) Order 2001 \(SI 2001/810\)](#) lists various grants made in Northern Ireland and declared by the Treasury to correspond to a grant under Part 2 of the Industrial Development Act 1982 in so far as they are made towards capital expenditure. The Industrial Development Act 1982 has been repealed. But a deduction under section 147 of this Act continues to be allowed for expenditure met by a grant corresponding to a grant under Part 2 of the 1982 Act incurred by the trader, or by a predecessor.

Section 150: Revenue nature of expenditure

578. This section provides for the trader’s expenditure, on producing or acquiring the original master version of a sound recording, to be treated as expenditure of a revenue nature. It is based on section 48 of FA 2006.
579. Where this section applies to a sound recording any of the trader’s receipts from it are treated as having a revenue nature.

Section 151: Allocation of expenditure

580. This section provides for the allocation of a trader’s expenditure on producing or acquiring the original master version of a sound recording except where that master version is trading stock. It is based on section 49 of FA 2006.
581. *Subsection (3)* sets out the basis for the allocation and *subsection (4)* provides for an enhanced allocation in certain cases.

Section 152: Interpretation of sections 150 and 151

582. This section provides definitions of terms used in the previous two sections. It is based on sections 31 and 50 of FA 2006.

Section 153: Reserves of marketing authorities and certain other statutory bodies

583. This section, and the following two sections, contain special rules for the treatment of the statutory reserve funds which must in certain circumstances be maintained by certain statutory authorities. It is based on section 509 of ICTA.
584. This section allows a qualifying statutory body a deduction in calculating its trade profits for any amount of its trade surplus that it is required to pay into a reserve fund.

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

Any amount withdrawn from the fund is taxed as a trade receipt unless it is a repayment of the levy or paid to the producers or a Government Department.

- 585. *Subsections (1) and (2)* identify the statutory bodies to which this section applies.
- 586. *Subsection (5)* provides definitions for the purposes of this section.
- 587. The roll of statutes which confer functions that are relevant to these sections and the population of statutory authorities to which these sections might apply has declined in recent years. The Cereals Marketing Act 1965 and the Agriculture Act 1967 still confer functions that are relevant for the purposes of these sections. See, in particular, the powers to make schemes under section 16 of the 1965 Act and section 13 of the 1967 Act.

Section 154: Conditions to be met by reserve fund

- 588. This section contains conditions which must be met by the reserve fund if the relief under section 153 is to be available. It is based on section 509 of ICTA.

Section 155: Interpretation of sections 153 and 154

- 589. This section provides definitions of constitutional authorities for the purposes of the two previous sections. It is based on section 509 of ICTA, paragraph 11 of Schedule 12 to the Northern Ireland Act 1998 and section 85 of the Government of Wales Act 2006.
- 590. *Subsections (1) and (2)* rewrite the source legislation to reflect the effect of devolution settlements. See *Change 15* in Annex 1.
- 591. The Government of Wales Act 2006 created a new devolution settlement for Wales. It replaced the National Assembly for Wales constituted under the Government of Wales Act 1998 (“the old Assembly”) with a new National Assembly for Wales. Schedule 11 to the 2006 Act provides for functions conferred on the old Assembly (with certain exceptions that are not relevant here) to be transferred to the Welsh Ministers. It is in theory possible that schemes such as are mentioned in section 509(1) of ICTA could have been approved by the old Assembly before its functions were transferred to the Welsh Ministers. A paragraph in Schedule 2, the Schedule of transitionals and savings (reserves of marketing authorities etc), affecting section 153(5), covers this possibility.
- 592. Subsection (1) refers to “a Minister within the meaning of the Northern Ireland Act 1988”. This rewrites the reference in section 509(3) of ICTA to a “head of department” read with paragraph 11(1) of Schedule 12 to the Northern Ireland Act 1998.