

CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Tax Status of MPs and Members of the House of Lords

Section 41: Tax status of MPs and members of the House of Lords

268. *Section 41* provides that MPs and most members of the House of Lords are to be deemed resident, ordinarily resident and domiciled in the UK (“ROD”) for the purposes of income tax, capital gains tax and inheritance tax. This means that they will be liable to pay these taxes in the UK on their worldwide income, gains, and assets regardless of their actual status in the UK, and that they will be unable to access the remittance basis of taxation.
269. The section provides that MPs and peers are deemed ROD for the whole of each tax year in which they are a member of either House (including those tax years in which they are a member for only part of the year). This means that they will be deemed ROD from the start of the tax year in which they become a member of that House and to the end of the tax year in which they cease to be a member. *Subsection (7)* provides that the section applies from the start of the tax year 2010-2011, but under subsection (8) (a) it will only apply in that tax year to MPs who are members of the new Parliament meeting in 2010. *Subsection (9)* defines a tax year for the purposes of inheritance tax as running from 6 April to 5 April (the phrase is already defined in other legislation for the other taxes).
270. *Section 41* applies to a person who has been elected as an MP after they have taken the oath of allegiance at the start of a new Parliament (as they are required to do under the Parliamentary Oaths Act 1866). For the purposes of the section, an MP ceases to be a member when the Parliament to which they were elected has been dissolved or their seat is otherwise vacated (by resignation, death or disqualification).
271. For the purposes of *section 41*, a member of the House of Lords is someone who is entitled to receive a writ of summons. *Subsection (6)(a)* specifically disapplies the provision for members of the judiciary who are disqualified from sitting and voting in the House under section 137 of the Constitutional Reform Act 2005. If such an individual were to leave the House on assuming judicial office during the course of a tax year, or return to the House after retiring during the course of a tax year, they will be deemed ROD for the whole of the tax year in question. *Subsection (6)(b)* disapplies the provision for the Lords Spiritual.
272. *Subsection (10)* provides that any temporary suspension or disqualification from entitlement to receive a writ imposed in the circumstances set out in paragraphs (a) or (b) are discounted when determining whether a person is entitled to receive a writ of summons (and is therefore a member of the House of Lords for the purposes of the

section). While a peer is subject to such temporary suspension or disqualification, the deeming provision would still apply to them.

Section 42: Tax status of members of the House of Lords: transitional provision

273. *Section 42* provides for a period of three months during which members of the House of Lords may give notice in writing to the Clerk of the Parliaments that they are not willing to be subject to the deeming provision in *section 41*, and if they do so their membership of the House of Lords will end at that point. *Section 41(8)(b)* provides that the deeming provision will only apply to peers who are members of the House of Lords at the end of this transitional period (and so will not apply to any peers who have left under this section before the end of that period). Peers who remain will then be deemed ROD from the beginning of the tax year (6th April 2010).
274. *Subsections (3) to (9)* provide that a peer who leaves the House under the transitional provision:
- will be enfranchised to vote in general elections,
 - will be ineligible to stand for election to the House of Commons for three years,
 - will not, if they were a hereditary peer, be replaced by another hereditary peer (reducing by one the number of hereditary peers remaining in the House under the House of Lords Act 1999),
 - may subsequently receive or succeed to a new peerage and once again be entitled to receive a writ of summons to attend the House (if the new peerage is a hereditary peerage, this will apply only if the person is elected to a seat in the House under the House of Lords Act 1999),
 - may once again be entitled to receive writs of summons if they become the Earl Marshal or Lord Great Chamberlain.
275. A peer is not entitled to receive a writ of summons if they are a Member of the European Parliament, but they do receive writs of summons once they step down from the European Parliament. Therefore, a peer who is an MEP would not be deemed ROD under *section 41*, but once entitled to receive writs again they would be deemed ROD. *Section 42(10)* allows such MEPs to avoid being deemed ROD in these circumstances by making the transitional provision available to such MEPs in the same way as to those peers currently entitled to receive writs of summons.