

*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**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Omitted material*

#### *Schedule 6: Consequential Amendments*

##### **General**

3578. This Schedule makes consequential amendments to other legislation. Many of those amendments are matters of detail, which do not require commentary; but there are also other amendments that are more substantial.
3579. A number of the more substantial amendments in this Schedule are connected with the provisions of Part 7 of this Act (employment income: share related income and exemptions). The majority of the provisions in the SIP code (deriving from Schedule 8 to FA 2000) and in the EMI code (deriving from Schedule 14 to that Act) are concerned with employment income; and, accordingly, appear in this Act – but not all of those provisions fall into this category. The view has been taken that it is more appropriate to move those remaining provisions to other destinations in the Tax Acts than to leave them where they are (see sections 515 and 527(3)). This Schedule makes provision accordingly.

##### **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

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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.

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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 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).

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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
  - 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.

**Part 2: Other enactments**

***Paragraph 126***

3618. This paragraph amends section 15 of TMA 1970. The amendments are straightforward and replace terms used in ICTA with those used in this Act.

***Paragraph 127***

3619. This paragraph substitutes a new section 16A of TMA 1970. This section applies section 15 of TMA 1970, the return of employees' earnings, to agency workers. The new wording accords with the language in this Act and there are signposts to Chapter 7 of Part 2, sections 44 to 47. The change in structure reflects the increased focus on the agency contract in these sections.

***Paragraph 137***

3620. This paragraph makes certain amendments to the table at the end of section 98 of TMA 1970 (penalties: special returns). Most are self-explanatory.
3621. Sub-paragraph (4)(e) deletes a reference to section 313(5) of ICTA from the second column of that table. Section 73 of FA 1988 replaced what were subsections (1) to (5)

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of section 313 of ICTA with subsections (1) to (4). As a result there was no longer any subsection (5). The consequential amendment to the table in section 98 of TMA 1970 was missed. This amendment, while not arising from the rewrite of section 313(5), corrects that oversight.

***Paragraph 147***

3622. This paragraph amends section 24 FA 1974, which extends the Inland Revenue's right to call for a return of the emoluments derived from duties performed in the United Kingdom.
3623. A return issued under section 24 FA 1974 can call for particulars of emoluments "whether or not tax is chargeable on them". This could be read as requiring the taxpayer to include details of emoluments that would be exempt, even in the case of a UK resident taxpayer working on UK duties for a UK employer. This paragraph removes any uncertainty about the meaning of "whether or not tax is chargeable on them" to make it clear the provision concerns the employee's "general earnings" (whether or not chargeable to tax) and that the return does not have to include income that is exempt.

***Paragraphs 157 and 158***

3624. These paragraphs amend sections 43 and 44 of FA 1989.
3625. Sections 43 and 44 were introduced as part of the changes made to put the assessment of employment income on a receipts basis. Broadly, they prevent a deduction for employees' pay unless it is paid during the period of account or within nine months after its end. As such, they align more closely the timing of the trading or investment company deduction with that of the charge to tax on the employee.
3626. Both sections contain numerous references to "emoluments".
3627. Rather than making a whole series of consequential amendments replacing the term "emoluments" wherever it occurs in sections 43 and 44 FA 1989 these paragraphs replace each of these two sections with a complete rewrite.

***Paragraphs 169 to 185***

3628. These paragraphs make amendments to the Social Security Contributions and Benefits Act 1992 ("SSCBA"). Most of the amendments change the ICTA references to Schedule E to the terms used in this Act for employment income and are straightforward.
3629. The term "emoluments" is used in many of the provisions and has been replaced with "general earnings".
3630. The replacement of section 10(7) of SSCBA 1992 with subsections (7), (7A) and (7B) provides the equivalent provision through this Act which ensures that Class 1A NICs are applied only to those benefits which remain chargeable to income tax.
3631. The definitions of all the terms have been placed in section 122 of SSCBA 1992.

***Paragraphs 190 to 204***

3632. These paragraphs make amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 corresponding to those made to the Social Security Contributions and Benefits Act 1992 by paragraphs 169 to 185 of this Schedule.

***Paragraph 210***

3633. This paragraph amends section 120 of TCGA 1992 which treats certain amounts chargeable to income tax in relation to shares as additional consideration for the

acquisition of those shares under section 38 of TCGA 1992. The amendments mainly reflect the new language and update references.

3634. *Sub-paragraph (2)* expands and rearranges section 120(1) to clarify how it operates and brings in material from FA 1988 so that the second paragraph of section 120(1) can be omitted. The words after the semi-colon in the first paragraph of section 120(1) are thought to be there in order that the relief given by the opening words of section 120(1) works in cases within section 83(1) of FA 1988 (where the shares are acquired by a person connected with the employee). This is made clear in the rewritten provision. The view is taken that no modification of the relief is required in cases to which section 83(2) of FA 1988 applies. See *Note 72* in Annex 2.
3635. *Sub-paragraph (7)* provides for the omission of section 120(6) of TCGA 1992. That provision effectively duplicated section 185(7) of ICTA. It also set out the transitional provisions. The effect of both subsections together with the transitionals now appears in new Schedule 7D to TCGA 1992.

### **Paragraph 212**

3636. This paragraph derives from section 68(4) of FA 1988. It inserts a new section 149C into TCGA 1992 relating to the capital gains treatment of priority share allocations. The income tax provisions are rewritten in Chapter 10 of Part 7 of this Act.

### **Paragraph 216**

3637. This paragraph inserts a new section 238A (approved share schemes and share incentives) into TCGA 1992. The purpose of the new section is to introduce Schedule 7D to TCGA 1992; and the contents of that new Schedule are set out in paragraph 221 of this Schedule.

### **Paragraph 217**

3638. This paragraph inserts a new section 263ZA (former employees: employment-related liabilities) into TCGA 1992. It derives from section 92(6) to (8) of FA 1995.
3639. *Subsections (1) to (3)* of the new section 263ZA provide that if a former employee is entitled to deduct an amount under section 555 of the Act (former employee entitled to deduction from total income) but has insufficient total income to absorb the amount deductible, then the excess may be treated as an allowable loss for the purposes of capital gains tax.
3640. *Subsections (4) and (5)* set a limit to the amount that can be so deducted.
3641. *Subsection (6)* introduces a small administrative change. It enables a single claim to cover relief against both total income and capital gains. See *Change 182* in Annex 1.

### **Paragraph 221**

3642. This paragraph inserts a new Schedule 7D into TCGA 1992; and the new Schedule deals with the capital gains tax aspects of approved share schemes and share incentives.
3643. Part 1 of the new Schedule deals with the capital gains tax aspects of approved SIPs. This Part forms part of the SIP code and derives from paragraphs 74, 97 to 102 and 104 of Schedule 8 to FA 2000. In this Part of this Schedule, paragraphs 2(4) and 4(6) derive from provisions inserted by the Employee Share Schemes Act 2002 with effect from 6 April 2003.
3644. Part 2 of the new Schedule deals with the capital gains tax aspects of approved SAYE option schemes. This Part forms part of the SAYE code and derives from provisions in section 185 of ICTA.

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3645. Part 3 of the new Schedule deals with the capital gains tax aspects of approved CSOP schemes. This Part forms part of the CSOP code and derives from provisions in section 185 of ICTA. It may be noted that section 185(7) of ICTA has been rewritten here together with the transitional provisions in section 120(6) of TCGA 1992. Section 120(6) of TCGA 1992 is now being repealed.
3646. Part 4 of the new Schedule deals with the capital gains tax aspects of enterprise management initiatives. This Part forms part of the EMI code and derives from paragraphs 56 to 58 of Schedule 14 to FA 2000.

***Paragraph 241***

3647. This paragraph amends paragraph 10(1) of Schedule 2 to the Tax Credits Act 1999. That amended section 71(8) of the Social Security Administration Act 1992 and section 69(8) of the Social Security Administration (Northern Ireland) Act 1992 in order to allow overpayments of tax credits to be collected through PAYE. This amendment replaces the reference to the legislation for PAYE in ICTA with a reference to “PAYE regulations” (defined in section 674(8) of this Act). It includes a minor change: see *Change 183* in Annex 1.

***Paragraph 257***

3648. This paragraph substitutes a new section 95 of FA 2001. This section provides for exemptions from stamp duty and stamp duty reserve tax in relation to approved SIPs; and the new section is accordingly part of the SIP code. Section 95 of FA 2001 originally operated by inserting a new paragraph 116A in Schedule 8 to FA 2000; but in this substituted version the exemptions have been removed from that Schedule and made free standing.

***Paragraphs 268 and 269***

3649. These paragraphs set out the consequential amendments that may be needed to some future Northern Ireland legislation. The amendments to the legislation that applies in Great Britain are set out earlier in the Schedule. Paragraphs 183 and 184 apply to legislation introduced by the Employment Act 2002. The enactment of the Northern Ireland provision corresponding to that legislation has been affected by the suspension of the Northern Ireland Assembly.