



Income tax and Members' expenses

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Under the *Income Tax (Earnings and Pensions) Act 2003* (ITEPA), certain allowances paid to Members of Parliament in accordance with resolutions of the House of Commons were exempt from taxation.

Following the passage of the *Parliamentary Standards Act 2009*, the Independent Parliamentary Standards Authority (IPSA) took on responsibility for determining Members' allowances. Since the general election, expenses have been paid in accordance with IPSA's *MPs' Expenses Scheme*, not in accordance with resolutions of the House. The IPSA Scheme was not covered by the provisions of the ITEPA.

Provisions were included in the Budget, presented to the House of Commons on 22 June 2010, to "consolidate existing tax and NICs [National Insurance Contributions] treatments following the introduction of the Parliamentary Standards Act 2009 and the provision in that Act for expenses to be administered by the IPSA rather than the House Authorities".

This note sets out the background to and extent of the provisions that applied to Members' allowances administered by the House. It gives details of the changes proposed in the Budget, and enacted in the *Finance (No 2) Act 2010*.

Further changes to IPSA's rules have led to provisions in the *Finance (No 3) Bill 2010-11*, which sets out further amendments to the ITEPA.

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1 Budget resolution

Following his budget statement on 22 June 2010, the Chancellor of the Exchequer proposed a motion for debate.¹ In addition, six other motions were tabled for decision at the end of the debate on the budget. One motion related to Members' expenses and income tax:

5. Income tax: expenses and allowances of MPs etc.

That provision may be made about expenses and allowances paid to members of the House of Commons and other representatives.²

In a Budget Notice issued on 22 June 2010, HM Revenue and Customs (HMRC) provided the following general description of the measure:

2. The Independent Parliamentary Standards Authority (IPSA) has developed a new scheme under which MPs have been paid their expenses since the Parliamentary election on 6 May 2010.

3. Legislation will be introduced in Finance Bill 2010 to amend the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to address the tax and National Insurance Contributions (NICs) consequences of the new expenses scheme for MPs. It will consolidate existing tax and NICs treatments following the introduction of the Parliamentary Standards Act 2009 and the provision in that Act for expenses to be administered by the IPSA rather than the House Authorities. Full details will be given in guidance to MPs.³

2 Background

Under the *Income Tax (Earnings and Pensions) Act 2003* (ITEPA), certain allowances paid to Members of Parliament in accordance with resolutions of the House of Commons were exempt from taxation.

Following the passage of the *Parliamentary Standards Act 2009*, the Independent Parliamentary Standards Authority (IPSA) took on responsibility for determining Members'

¹ HC Deb 22 June 2010 c182

² House of Commons, *Order Paper*, 23 June 2010

³ HM Revenue and Customs, *Expenses Paid to MPs*, Budget Notice 30, 22 June 2010, [Hhttp://www.hmrc.gov.uk/budget2010/bn30.pdf](http://www.hmrc.gov.uk/budget2010/bn30.pdf)

allowances. Since the general election, expenses have been paid in accordance with IPSA's *MPs' Expenses Scheme*, not in accordance with resolutions of the House. The IPSA Scheme is not covered by the provisions of the ITEPA.

The *Income Tax (Earnings and Pensions) Act 2003* (chapter 1) included the following provision, which meant that the Additional Costs Allowance and its replacement Personal Additional Accommodation Expenditure (PAAE) were tax-exempt:

292 Overnight expenses allowances of MPs

(1) No liability to income tax arises in respect of an overnight expenses allowance paid to a Member of the House of Commons in accordance with a resolution of that House.

(2) "Overnight expenses allowance" means an allowance expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from the Member's only or main residence, for the purpose of performing parliamentary duties—

(a) in the London area, as defined in such a resolution, or

(b) in the Member's constituency.⁴

Section 293 of the Act extends these provisions to elected representatives in the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales. And section 294 provided that Members of Parliament and of other legislatures were not liable for tax on any funding they received for certain European travel undertaken in relation to their parliamentary duties.

The notes to the *Income Tax (Earnings and Pensions) Act 2003* state that section 292 was derived from the *Income and Corporation Taxes Act 1988* section 200 (1). However, the provision was first introduced in the *Finance Act 1984*, which was consolidated into the *Income and Corporation Taxes Act 1988*.

The *Finance Act 1984* (chapter 43) included, at section 28, the following provision, which was introduced as clause 28 of the *Finance No 2 Bill 1983-84*:

Accommodation allowances and expenditure of MPs.

28.—(1) An allowance—

(a) which is paid to a Member of the Commons House of Parliament in respect of any period after 31st March 1984, and

(b) for which provision is made by Resolution of that House, and

(c) which is expressed to be in respect of additional expense necessarily incurred by the Member in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties, either in the London area, as defined in such a Resolution, or in his constituency,

shall not be regarded as income for any income tax purpose.

(2) For the year 1984-85 and subsequent years of assessment,—

(a) no deduction shall be made under section 189 of the Taxes Act (relief for necessary expenses) in respect of expenditure incurred by a Member of the Commons House of Parliament in, or in connection with, the provision or use of

⁴ *Income Tax (Earnings and Pensions) Act 2003* (chapter 1), section 292 (before it was amended by the *Finance (No 2) Act 2010*)

residential or overnight accommodation to enable him to perform his duties as such a Member in or about the Palace of Westminster or his constituency; and
(b) no allowance shall be made under Chapter I of Part III of the Finance Act 1971 (capital allowances) in respect of any expenditure so incurred.

The clause was not debated during the *Finance No 2 Bill*'s committee stage, although during the committal debate, after the second reading, Terry Davis had suggested unsuccessfully that, contrary to the committal motion, the clause ought to be taken on the floor of the House:

... There is a case for saying that the debate on accommodation allowances and the expenditure of hon. Members, clause 28, should be taken on the Floor of the House so that the country may see what we are doing in discussing matters which affect our personal interest.⁵

In November 2009, in response to a Freedom of Information request for "information referring to an intention to legislate on MPs' expenses in the 1984 Finance Act", HM Treasury released 11 documents and withheld one document providing legal advice on the measure. The information is available on the Treasury's website. The eleven documents released are a series of minutes from the Inland Revenue Policy Division to the Treasury.⁶

3 2010 proposals

The HMRC Budget Notice on *Expenses Paid to MPs* noted that in addition to the expenses under the House of Commons scheme that were covered by tax exemptions under sections 292 and 294 of ITEPA, other concessions were made in relation to the tax position of Members' travel:

To recognise the requirement of MPs of having to carry out their duties in both their constituencies and Westminster, the rules which allow tax relief for expenses incurred on work-related travel have, under a long standing concession, been extended to allow relief for all journeys on Parliamentary business.

[...]

Prior to 7 May 2010 MPs were reimbursed the cost of specific travel by spouses and, by concession, no liability to income tax arose.⁷

In addition, the House of Commons scheme had allowed for the cost of meals (when the House sat late) to be claimed under the PAAE, which meant that they were not subject to tax under ITEPA. However, the IPSA Scheme makes separate provision for meals.

HMRC stated that the *Finance Bill 2010-11* would make the following changes to legislation to ensure that the expenses claimed by Members in relation to accommodation and travel that were previously exempt from tax continue to be so:

- ITEPA sections 292 and 294 would be amended to reflect that IPSA is now running the *MPs' Expenses Scheme*;

⁵ HC Deb 10 April 1984 c353

⁶ HM Treasury, *1983/84 correspondence on MPs expenses - leading to Clause 28 of the Finance Act 1984*, 3 November 2009, [Hhttp://www.hm-treasury.gov.uk/foi_expenses_1984.htm](http://www.hm-treasury.gov.uk/foi_expenses_1984.htm)

⁷ HM Revenue and Customs, *Expenses Paid to MPs*, Budget Notice 30, 22 June 2010, paras 7 and 9, [Hhttp://www.hmrc.gov.uk/budget2010/bn30.pdf](http://www.hmrc.gov.uk/budget2010/bn30.pdf)

- a statutory exemption would be introduced “for certain travel expenses paid or reimbursed to MPs by IPSA as expenses necessarily incurred in the performance of MPs’ Parliamentary functions”;
- “a provision will be introduced to allow the tax-free treatment of these payments [for specific travel by spouses]”; and
- “A new provision is therefore being introduced to exempt from tax the cost of [evening meals purchased by MPs and eaten on the Parliamentary estate when the House of Commons is sitting late] reimbursed under IPSA’s scheme to maintain the previous tax treatment”.⁸

These changes “will have retrospective effect on and after 7 May 2010”.⁹

4 Provisions in the *Finance (No 2) Act 2010*

The changes proposed in the second budget of 2010 were enacted in the *Finance (No 2) Act 2010*. The provisions were briefly debated at Committee Stage in the House of Commons,¹⁰ but not changed during their passage through Parliament.

Justine Greening, the Economic Secretary to the Treasury, explained the effect of the provisions, in response to queries raised by the Opposition Spokesman, Stephen Timms:

[Justine Greening]: The key provisions will broadly maintain the long-standing statutory exemptions for overnight accommodation and EU travel expenses that were introduced in recognition of the particular role of MPs. The provisions will codify elements of concessionary tax treatments that, because MPs are required to carry out their duties both in their constituencies and in the House, have applied for many years to certain UK travel expenses paid to MPs. Additionally, they will reflect IPSA’s decision to continue to reimburse some UK travel for MPs’ spouses and partners, albeit in more restricted circumstances. The schedule therefore puts the previous concessionary treatment on a statutory footing to allow those payments to continue to be made without tax being due. Finally, the provisions reflect IPSA’s decision to deal with payments for evening meals separately from general expenditure connected to overnight accommodation, and the schedule now introduces a specific exemption for the costs of meals reimbursed under IPSA’s scheme. Again, that maintains the previous tax treatment.

The right hon. Gentleman raised two issues-about late-night sittings and accommodation. He is right: there is indeed a difference. The IPSA and tax treatment is different for sittings that end after 1 am and for sittings that end between 11 pm and 1 am. For sittings that run after 11 o’clock, there is tax exemption for expenses incurred for overnight accommodation, because that is deemed by IPSA a necessary expense incurred in the MP role.

Non-London MPs who decide to take the London allowance-the London expense regime-are able to charge overnight accommodation if the House sits after 11 pm, as the right hon. Gentleman pointed out. However, that charge is not tax-exempt; it is deemed subject to normal tax treatment for any employee. A normal employee would not be able to claim a tax exemption if they chose to stay in a hotel because they had been working late. The rules for the House sitting past 1 o’clock are agreed with IPSA

⁸ *Ibid*, paras 8,9 and 10

⁹ *Ibid*, para 4

¹⁰ HC Deb 15 July 2010 cc1182-1185

as necessary for the fulfilment of the MP role, so are tax-exempt. Before that, although MPs from outside the London area can get reimbursement for overnight costs, they are not tax-exempt. I hope that I have clarified the situation, even though some people might not agree that the tax treatment set out in the clause and schedule 4 is fair.

Children's travel was not tax exempt under the previous scheme, and clause 7 and schedule 4 merely maintain the same tax treatment of children. However, the right hon. Gentleman was right to point out that the tax exemption for spouses will continue, albeit with some more restrictive conditions. Again, I hope that I have clarified the position.

As IPSA continues to develop its expenses regime over the coming months and perhaps years, we will obviously have to keep an eye on any changes and ensure that we determine whether we need to reflect them in tax law.¹¹

The Exchequer Secretary to the Treasury, David Gauke, subsequently wrote to Stephen Timms, to clarify Justine Greening's comments and to draw attention to guidance on tax and national insurance for Members and ministers:

Following the publication of Hansard, the Economic Secretary has asked me to re-confirm that it is for sittings that run after 1 o'clock a.m. that all MPs are entitled to a tax exemption for expenses incurred for overnight accommodation, because that is deemed by IPSA a necessary expense incurred in the MP role. But for sittings that run after 11 o'clock p.m., only non-London MPs who have chosen to be in receipt of the London Area Living Payment are entitled to a reimbursement of expenses for an overnight stay in a hotel, and then they are not exempt from tax by clause 7.

The new guidance for MPs which will be published after Royal Assent will explain the final statutory provisions fully, and also make clear that the tax treatment of the allowances and reimbursements being made by IPSA will have retrospective effect from 7 May 2010 when the new IPSA scheme began. We will make parallel NICs regulation in due course to ensure that allowances and reimbursements made by IPSA receive the same treatment for tax and NICs purposes. HMRC's care and management powers will cover the period before those NICs regulations come into force.¹²

Section 292, as amended by the *Finance (No 2) Act 2010*, and a new section 293A, inserted by the *Finance (No 2) Act 2010*, of the ITEPA are set out in the Appendix of this note

4.1 Tax guidance

The guidance, *Tax and National Insurance contributions: Guide for MPs and Ministers*, issued by HMRC is available online.¹³

5 Changes to IPSA's *Members' Expenses Scheme*: tax consequences

In July 2010, IPSA made changes to the *Members' Expenses Scheme*.¹⁴ Further changes were made from 1 April 2011.¹⁵

¹¹ HC Deb 15 July 2010 cc1184-1185

¹² [HLetter dated 20/07/2010 from David Gauke MP to Liam Byrne MP and Stephen Timms MP regarding the committee stage of the Finance Bill](#), DEP 2010-1510, 20 July 2010

¹³ HM Revenue & Customs, [HTax and National Insurance contributions: Guide for MPs and Ministers](#), MP/M1, HMRC 04/11

¹⁴ Independent Parliamentary Standards Authority, [HThe MPs' Expenses Scheme: Second Edition](#), July 2010, HC 405 2010-11

To reflect IPSA's decision to allow payments to be made directly to landlords,¹⁶ the *Finance (No 3) Bill 2010-11* (Bill 175 of 2010-11) provides for a further amendment of section 292 of ITEPA:

37 Accommodation expenses of MPs

- (1) In section 292 of ITEPA 2003 (accommodation expenses of MPs), after subsection (4) insert—
 - “(5) The reference in subsection (1) to a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 includes a payment made under that section to another person at the direction of a member (see section 6(7) of that Act).”
- (2) The amendment made by this section has effect in relation to payments made under section 5(1) of the Parliamentary Standards Act 2009 on or after 1 November 2010.

¹⁵ Independent Parliamentary Standards Authority, *HThe MPs' Expenses Scheme: Third EditionH*, May 2011, HC 954 2010-12 (replacing HC 890 2010-11, laid on 24 March 2011)

¹⁶ Independent Parliamentary Standards Authority, *HExpenses Scheme: New Payment Mechanisms and Review of RulesH*, Letter from Interim Chief Executive of IPSA to Members of Parliament, 9 November 2010

Appendix: Changes to the ITEPA made by the *Finance (No 2) Act 2010*

SCHEDULE 4

EXPENSES PAID TO MPs ETC

Accommodation expenses

1(1) ITEPA 2003 is amended as follows.

(2) For section 292 substitute—

“292Accommodation expenses of MPs

(1) No liability to income tax arises in respect of a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 if the payment is—

(a) expressed to be made in respect of accommodation expenses, or

(b) related to or in consequence of a payment expressed to be so made.

(2) “Accommodation expenses” means expenses necessarily incurred on overnight accommodation that is required for the performance of the member’s parliamentary duties in or about the Palace of Westminster or the member’s constituency.

(3) But the cost of an overnight stay in a hotel that was required only because, on that night, the member had been required to be at the House of Commons because the House was sitting late does not count as accommodation expenses for the purposes of this section, unless the member had been required to be at the House because it was sitting beyond 1 a.m.

(4) Subsection (1) does not apply to a loan for a deposit payable at the commencement of a tenancy.”

(3) In section 360 (disallowance of certain accommodation expenses of MPs and other representatives), insert at the end—

“(3)In relation to a member of the House of Commons, subsection (3) of section 292 applies for the purposes of this section as it applies for the purposes of that section.”

(4) The amendment made by sub-paragraph (2) has effect in relation to payments made under section 5(1) of the Parliamentary Standards Act 2009 on or after 7 May 2010.

(5) In relation to payments made on or after that date in accordance with a resolution of the House of Commons passed before that date, ITEPA 2003 continues to have effect as if that amendment had not been made.

(6) The amendment made by sub-paragraph (3) has effect in relation to expenses incurred on or after that date.

UK travel and subsistence expenses

2(1) In ITEPA 2003, after section 293 insert—

“293AUK travel and subsistence expenses of MPs

(1) No liability to income tax arises in respect of a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 if the payment is expressed to be made—

- (a) in respect of relevant UK travel expenses, or
- (b) in respect of relevant subsistence expenses.

(2) "Relevant UK travel expenses" means expenses necessarily incurred on journeys of the following kinds within the United Kingdom—

- (a) journeys made by the member that are necessary for the performance of the member's parliamentary duties, and
- (b) if the member shares caring responsibilities with a spouse or partner, journeys made by the spouse or partner between the member's London Area residence and the member's constituency residence.

(3) "Relevant subsistence expenses" means expenses necessarily incurred on an evening meal (excluding alcoholic drinks) eaten on the Parliamentary Estate, where the member is required to be at the House of Commons because the House is sitting beyond 7.30 p.m.

(4) "Caring responsibilities" and "London Area" have the same meaning in subsection (2)(b) as they have in the scheme in effect for the time being under section 5 of the Parliamentary Standards Act 2009."

(2) The amendment made by sub-paragraph (1) has effect in relation to payments made under section 5(1) of the Parliamentary Standards Act 2009 on or after 7 May 2010.

(3) In relation to payments made on or after that date in accordance with a resolution of the House of Commons passed before that date, ITEPA 2003 continues to have effect as if that amendment had not been made.¹⁷

¹⁷ Extract from Schedule 4 of the *Finance (No 2) Act 2010* (chapter 31)