

EXPLANATORY NOTE

CLAUSE 200: AUTHORISED UNIT TRUSTS AND OPEN-ENDED INVESTMENT COMPANIES: INTEREST DISTRIBUTIONS PAID GROSS.

SUMMARY

1. This clause introduces new conditions which will make it easier for authorised unit trusts (AUTs) and open-ended investment companies (OEICs) to pay interest distributions to foreign unit holders without deducting tax. All references below are to AUTs but, on the strength of existing regulations, they apply equally to OEICs. The clause operates for all interest distributions made on or after 16 October 2002.

DETAILS OF THE CLAUSE

2. Subsection (1) is introductory.
3. Subsection (2) amends section 468L(4) of the Income and Corporation Taxes Act (ICTA) 1988 in consequence of changes to sections 468M and 468N ICTA 1988 (see paragraph 4 below). (All subsequent statutory references in this note are to ICTA 1988 unless otherwise stated.)
4. Subsection (3) substitutes new section 468M for sections 468M and 468N. New section 468M(1) sets out the circumstances in which there is no obligation to withhold tax on the making of interest distributions to unit holders. These are where the unit holder is a company (there are consequential repeals of section 468O(2), section 468P(4) and part of section 468P(5)), or the trustees of a unit trust scheme, or where either the residence condition or the reputable intermediary condition is fulfilled on the distribution date. The residence and reputable intermediary conditions are explained in section 468O (section 468M(2)).

5. Subsection (4) introduces amendments to section 468O.
6. Subsection (5) amends section 468O(1) in consequence of the changes to sections 468M and 468N (compare paragraph 3 above).
7. Subsection (6) inserts new subsections (1A), (1B) and (1C) into section 468O. New subsections 468O(1A) and 468O(1B) set out the three tests that need to be fulfilled for the reputable intermediary condition to be satisfied. The first is that the intermediary, to whom the interest distribution is paid on behalf of the unit holder, is a company (section 468O(1A)(a)).
8. The second test is that the intermediary is either a credit or financial institution subject to the EC Money Laundering Directive, or is a credit or financial institution that is subject to equivalent requirements (section 468O(1A)(b) and (1B)). The test also extends to include companies that are associated with such credit or financial institutions, provided that they are resident in an EC Member State, or in a country that imposes equivalent money laundering requirements. New subsection 468O(1C) provides for the Treasury to make consequential amendments should the 1991 Money Laundering Directive cease to have effect or is further amended.
9. The third test is that the trustees of the AUT have reasonable grounds for believing that the unit holder, on behalf of whom the interest distribution is made, is not ordinarily resident in the United Kingdom (section 468O(1A)(c)).
10. Subsection (7) makes a consequential amendment to the sidenote.
11. Subsection (8) makes changes to section 468P in consequence of the repeal of section 468O(2) (see paragraph 4 above).
12. Subsection (9) inserts new sections 468PA and 468PB. Section 468PA ensures that where the AUT trustees have reasonable grounds for making an interest distribution gross under the condition in new section 468O(1A)(c), but that belief turns out to be incorrect, Section 350 and Schedule 16 apply to allow recovery of the tax that should have been withheld.

13. Section 468PB allows the Board to make regulations supplementing sections 468M to 468PA. In particular, these regulations may allow the modification of sections 468M, 468O, 468P and 468PA in relation to interest distributions made to or received under a trust (section 468PB(2)), which replaces the repealed section 468O(3). And they may allow the Board to issue notices to AUT trustees requiring the provision of information relevant to the making of gross interest distributions (section 468PB(3)), which replaces and extends the repealed section 468P(8)).
14. Subsection (10) introduces amendments to section 98 of the Taxes Management Act (TMA) 1970.
15. Subsection (11) makes a consequential change required by the insertion of new subsection 98(4E) TMA 1970 (see paragraph 16 below).
16. Subsection (12) inserts new subsection 98(4E) TMA 1970. The provision applies to those cases in which the AUT trustees make a gross interest distribution in apparent reliance on the reputable intermediary condition, but they do not reasonably believe, or could not reasonably have believed, that the unit holder, was not ordinarily resident in the United Kingdom. In such cases the penalty due is increased in line with section 98(4A) TMA 1970.
17. Subsection (13) provides for the penalty provisions of section 98 TMA 1970 to apply to failures to comply with notices for the provision of declarations under section 468P(6) and relevant information under regulations allowed by section 468PB (see paragraph 13 above).
18. Subsection (14) brings the new provisions into force for interest distributions made on or after 16 October 2002.

BACKGROUND

19. This clause is one of two measures to boost the competitiveness of UK-authorized funds in overseas markets. It applies to interest

distributions made by AUTs and OEICs on or after 16 October 2002.

20. The distributions made by AUTs and OEICs may be classified as interest distributions where broadly more than 60% of their assets are interest-bearing. Interest distributions should be made under deduction of tax unless specific conditions apply. One of these conditions is referred to as “the residence condition”.
 21. The residence condition applies where an interest distribution is made to a foreign unit holder and the unit holder provides a signed declaration of non-residence. However, it is often difficult for fund managers to comply with this condition. This is because typically interest distributions are not made to foreign unit holders direct but to intermediaries on their behalf. Foreign investors as a result will often prefer to invest in funds that are able to make gross distributions automatically and which do not require the kind of form filling necessary to get gross payment from UK funds.
 22. This clause therefore specifies further circumstances in which interest distributions can be made gross. The further circumstances are where the interest distribution is made to a unit holder that is either a company or the trustees of a unit trust scheme; or where the “reputable intermediary condition” is satisfied.
 23. The reputable intermediary condition is satisfied where the intermediary is a company, is subject to the Money Laundering Directive or equivalent rules, and the fund manager has reasonable grounds for believing that the unit holder is not ordinarily resident in the UK.
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EXPLANATORY NOTE

CLAUSE 201: MANDATORY E-PAYMENT

SUMMARY

1. This clause allows the Inland Revenue to require large employers to use electronic means for the making of payments.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for the Commissioners of Inland Revenue to make regulations requiring large employers to use electronic means for the making of payments.
3. Subsection (2) defines large employer as a person paying PAYE income to 250 or more recipients and allows the regulations to provide for how this measurement is applied.
4. Subsection (3) sets out examples of the sort of provisions that may be made by the regulations. These include the following:
 - The regulations may set other conditions in connection with the use of electronic payment. This will allow the Inland Revenue to specify acceptable methods of electronic payment. (3)(a)
 - The regulations may provide for payment to be treated as not made where conditions are not satisfied. (3)(b)
 - The regulations may provide for determining the time when the payment is deemed to have been made. (3)(c)
5. Subsection (4) provides that the regulations may make provision as to the manner of proving various matters.
6. Subsection (5) allows authorisations or requirements provided for in the regulations to be given by means of directions made by the Commissioners.

7. Subsection (6) allows the Commissioners to provide for employers to be notified that they appear to be within a category of persons required to pay electronically and to provide for appeals against such notices.
8. Subsection (7) provides that the regulations may include provision for the Commissioners to suspend a requirement to pay electronically, and make alternative arrangements, for any period where paying electronically is impractical or impossible.
9. Subsection (8) allows the regulations to provide for a surcharge for failure to comply with the regulations.
10. Subsection (9) allows the regulations to specify surcharge rates for each failure to comply with the regulations. The maximum surcharge rates that may be specified are 10% of the amount of the payment, to which the failure relates, or 0.83 % of the total amount due for the year.
11. Subsection (10) contains a number of miscellaneous powers including the power to make different provisions for different categories of persons.
12. Subsection (11) provides that regulations under this clause are to be made by statutory instrument, subject to the negative instrument procedure.
13. Subsection (12) sets out various definitions.

BACKGROUND

14. Regulations will be made under these powers to require employers with 250 or more employees to also make payments electronically from April 2004.

EXPLANATORY NOTE

**CLAUSE 202: USE OF ELECTRONIC MEANS OF PAYMENT
UNDER OTHER PROVISIONS**

SUMMARY

1. This clause deals with the interaction between clause 201 and other tax provisions, so that secondary legislation made under other tax provisions may include requirements for large employers to make payments electronically similar to those that may be set using the powers in clause 201.

DETAILS OF THE CLAUSE

2. Subsection (1) extends the scope of existing powers to make subordinate legislation about the making of payments, in relation to taxation matters, to include powers corresponding to those now provided by clause 201. This means that, for example, that a single set of regulations can be made, with the same Parliamentary control and by the same persons as provided for in the existing power, incorporating everything that would otherwise have to be done separately under clause 201.
3. Subsection (2) provides for regulations, made under clauses 201 or 202, to have effect notwithstanding provision in other legislation that permits the use of means of payment. This power to override primary legislation is needed so that the requirement for large employers to make payments electronically can be included in the PAYE regulations and the powers in Social Security legislation then used to set similar requirements for the payment of National Insurance contributions.
4. Subsection (3) provides that corresponding expressions in clauses 201 or 202 have the same meaning.
5. Subsection (4) makes it clear that this clause supplements, rather than limits, the preceding one.

EXPLANATORY NOTE

**CLAUSE 203: ADMISSIBILITY OF EVIDENCE NOT
AFFECTED BY OFFER OF SETTLEMENT, ETC.**

SUMMARY

1. The clause reflects in legislation wording from the Chancellor's statement about Inland Revenue policy on prosecutions for tax evasion, made on 7th November 2002. The effect of the legislation is unchanged; it provides for the admissibility of evidence into various hearings of the statements made or documents produced during either "Hansard procedure" cases or other civil settlements resulting in penalties being levied.

DETAILS OF THE CLAUSE

2. Subsection (1)(a) updates the text in section 105(1) of the Taxes Management Act 1970. The effect of the clause remains unchanged; statements made or documents produced shall not be inadmissible following the Inland Revenue's civil settlement procedures in cases of serious tax fraud, commonly known as "the Hansard procedure".
3. Subsection (1)(b) updates the text in respect of non-Hansard cases, so that the update at subsection (1)(a) above does not have any effect on the provisions here.
4. Subsection (2) amends the heading of this section to provide clarity that it concerns the admissibility of evidence into various hearings and that the admissibility is not affected by offer of settlement or other factors set out in this section.
5. Subsection (3) creates equivalent provision for cases of stamp duty fraud, following the provisions at subsection (1)(a) and (1)(b) above.

6. Subsection (4) provides for the section concerning cases of stamp duty fraud to have a heading equivalent to that in subsection (2) above.
7. Subsection (5) applies the section to statements made, or documents produced, after the passing of this Act.

BACKGROUND

8. The Inland Revenue has a published selective prosecution policy. The majority of cases of tax fraud are settled on a civil basis and some cases of serious tax fraud may be subject to a money settlement. The procedure by which this is resolved is commonly known as the “Hansard procedure”. This name has been associated with the procedure because the text of a statement made in Hansard by the Chancellor of the day about the Board of Inland Revenue’s prosecution policy is read by an officer of the Inland Revenue to the taxpayer suspected of serious tax evasion.
9. This Hansard statement has been revised recently to include two additional factors:
 - š firstly, that a taxpayer making a full confession in response to the Hansard text may now be assured that they will not be prosecuted. The revised statement is explicit on this point, whereas the previous statement merely invited the taxpayer to infer this.
 - š secondly, that the degree of co-operation afforded by the taxpayer is no longer a feature of the statement. The decision about whether or not to pursue a criminal prosecution is tied only to the fullness of the confession, rather than to both this and the degree of co-operation.
10. If a taxpayer is offered Hansard and does not make a full confession, or tells lies in his response, it is highly likely that he will be prosecuted. This section enables the Inland Revenue to present the statements made or documents produced during the Hansard procedure into any subsequent court hearing.

11. For those cases of tax evasion in which the Revenue levies a civil penalty but Hansard is not offered, usually in less serious cases of tax evasion, the degree of co-operation and the amount of information provided by the taxpayer is taken into account in determining the amount of the penalty to be levied.
 12. The amount of the penalty may become the subject of an appeal to the General or Special Commissioners. The Inland Revenue are able to put before the Commissioners' hearings for their consideration, statements made or documents produced during the civil settlement procedure.
 13. This clause also creates new and equivalent provisions in respect of cases of stamp duty fraud. The admissibility of evidence into various hearings applies equally to these stamp duty cases as described in the paragraphs above in respect of tax, tax credits and national insurance contribution evasion cases.
 14. The update to the legislation reflects the changes in the statement by Treasury Ministers about the Hansard procedure, but it has no effect on the provision of the legislation itself. This is to do with the admissibility of evidence in any subsequent hearings and this remains unchanged.
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EXPLANATORY NOTE**CLAUSE 204: CONSEQUENTIAL CLAIMS ETC****SUMMARY**

1. This clause give taxpayers rights to make, revise, and withdraw claims, elections, applications and notices (claims etc.) at the end of enquiries into Income Tax Self Assessment returns and provides for effect to be given to the consequences such claims etc. The intention is to give taxpayers the same rights to make, revise, and withdraw claims etc. that they have in relation to ‘discovery’ assessments to charge tax for earlier years.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts a new clause ‘Section 43C’ into Taxes Management Act (TMA) 1970

3. Section 43C(1) provides that where, at the end of an enquiry into a Income Tax Self Assessment (ITSA) return, the return is amended to make good to the Crown any loss of tax attributable to fraudulent or negligent conduct, the taxpayer is given the same claims etc. rights as he would enjoy if an assessment was made to make good to the Crown any loss of tax attributable to fraudulent or negligent conduct.

4. Section 43C(2) provides that where, at the end of an enquiry into a ITSA return, the return is amended to make good to the Crown any loss of tax not attributable to fraudulent or negligent conduct, the taxpayer will be given the same claims etc. rights as he would enjoy if an assessment was made to make good to the Crown any loss of tax not attributable to fraudulent or negligent conduct.

5. Section 43C(3) provides for subsections (2) & (3) to be made effective by requiring references to ‘an assessment’ in those parts of the

Act that refer to rights in relation to claims etc. for assessments to make good to the Crown any loss of tax, to be read as references to the amendment of the return.

6. Section 43C(4) provides that the Inland Revenue has one year from the date of such a claim etc. becoming final to make any assessments necessary as a consequence of that claim etc.

7. Section 43C(5) provides that subsection (4) applies in respect of claims etc. in response to an amendment to the return and in respect of claims etc. in response to an assessment to make good to the Crown any loss of tax.

8. Subsection (2) provides for the substitution of words in section 43A TMA 1970. The effect is to prevent elections under section 35(5) Taxation of chargeable Gains Act 1992 (election for assets to be re-based to 1982) from being made, revoked or varied at the end of an enquiry or when a discovery assessment is made.

9. Subsection (3) provides that this clause applies only to returns amended after the Act is passed.

BACKGROUND

10. Where assessments are made to make good to the Crown any loss of tax (i.e. a 'discovery' assessment), taxpayers can make, revise and withdraw claims etc. where they would otherwise be out of time to do so. It had been intended that this right should also apply where a return is amended at the end of an enquiry. However, it does not.

11. Where enquiries into returns reach back beyond the enquiry year so that 'discovery' assessments are necessary, there is the anomalous situation that taxpayers can make, revise and withdraw claims etc. for the earlier years but not for the most recent year.

12. Section 43C TMA 1970 corrects this by giving taxpayers the same rights in respect of claims etc. when returns are amended as they enjoy where discovery assessments are made.

13. All claims etc. can have knock-on consequences - e.g. for the reliefs available for other years or to other taxpayers. (Claims affecting another person's liability require the written consent of that other person). But where late claims etc are admitted, those consequential impacts can be on reliefs already given and/or for years that have become final. Sections 43C(4) & (5) allow the Inland Revenue to give effect to the knock-on consequences.

14. Current legislation makes two exceptions to elections that can be made late in response to a discovery assessment. This clause adds a third exception - 'rebasing elections' for capital gains tax.

15. In allowing what would otherwise be late claims etc. the legislation also limits the claim to the amount of the additional tax charged so not to give non-compliant taxpayers an advantage over compliant taxpayers. However, the nature of rebasing elections means that it is impossible to limit their effect to the amount of the additional tax charged.

16. There are no known incidences of taxpayers seeking to make/revoke a rebasing election in these circumstances so, up to now, the problem of conflicting requirements has been theoretical. But the opportunity has been taken in this clause to attend to this piece of 'housekeeping'.

EXPLANATORY NOTE

**CLAUSE 205: ORDINARY ACCOUNTS AND INVESTMENT
ACCOUNTS**

SUMMARY

1. This clause amends the National Savings Bank Act 1971 (c.29) to enable the Treasury, by making regulations; to close any of the existing types of savings accounts with the National Savings Bank after a prescribed date, and to make provision for dormant accounts; and for the issue of cards to customers which can be used to make investment deposits or to withdraw cash from investment accounts. The clause also permits the Treasury to set an interest rate by reference to a formula involving the movement of an index or indices and to allow the Treasury to introduce new investment accounts whose terms may be set out in written Terms and Conditions rather than under regulations.

DETAILS OF THE CLAUSE

2. Subsection (1) says that the National Savings Bank Act 1971 (c.29) is amended in accordance with this clause. The new provisions will give National Savings and Investments (NS&I) the ability to modernise and rationalise its savings accounts products.

3. Subsection (2) inserts new subsection (1A) into section 3 of the 1971 Act. New subsection (1A) provides that the making of ordinary deposits under section 3(1) of the 1971 Act is subject to regulations made by the Treasury made by virtue of section 8(3). Section 8(3) is new and extends the power to make regulations to enable the Treasury to prohibit the opening of new accounts and/or the making of deposits into existing accounts (see subsection (10) below). The new provisions will enable the Treasury, by regulation, to close any of the existing accounts as they become superseded.

4. Subsection (3) says that section 6 of the 1971 Act (which provides for the setting of interest rates on investment deposits) is amended.

5. Subsection (4) amends section 6(2) of the 1971 Act so that the rates of interest payable on investment deposits are to be determined by the

Treasury instead of by the Director of Savings with the consent of the Treasury. This brings section 6(2) into line with section 120(8) of the Finance Act 1980. Subsection (4) together with subsection (7) (see below) allows section 120(8) of the Finance Act 1980 to be repealed.

6. Subsection (5) inserts new subsection (2ZA) into section 6 of the 1971 Act. New subsection (2ZA) provides that the Treasury may determine a rate of interest on investment deposits by reference to a formula involving the movement of an index or indices. This will enable the interest due on specified savings accounts to be calculated by reference to a change in an index, for example, the change in the FTSE 100 index over a defined period, in addition to setting straightforward interest rates.

7. Subsection (6) amends section 6(3) of the 1971 Act (which requires the Director of Savings to give notice of any change in interest rates on investment deposits in the London, Edinburgh and Belfast Gazettes) so as to disapply that requirement where the rate of interest is determined by reference to the movement of an index or indices. That requirement would make no sense in such a case because the rate could not be calculated until the end of the period over which the movement in the index is to be measured.

8. Subsection (7) inserts new subsection (4) into section 6 of the 1971 Act. New subsection (4) provides that, where there is an alteration in a rate of interest which does not affect deposits received before the alteration is made, a notice of the alteration which is required by section 6(3) of the 1971 Act to be given may be given after the alteration is made. New subsection (4) mirrors part of section 120(8) of the Finance Act 1980 and thus, together with the amendment to section 6(2) of the 1971 Act effected by subsection (4) (see above), enables section 120(8) of the Finance Act 1980 to be repealed.

9. Subsection (8) says that section 8 of the 1971 Act (which gives details of particular matters which regulations under section 2 may cover) is amended.

10. Subsection (9) inserts a new paragraph (ba) into section 8(1) of the 1971 Act the effect of which is to give the Treasury the power to make regulations for the purpose of issuing cards to be used for the making of deposits into, or withdrawing cash from, investment accounts. This provision will enable NS&I to issue cards to customers so that they can, for example, make cash withdrawals from ATM machines.

11. Subsection (10) adds new subsections (3) and (4) to section 8 of the 1971 Act. New subsection (3), which will enable the Treasury by regulation to close any of the existing accounts as they become superseded, provides that the Treasury may make regulations under section 2 that would-

prohibit the opening of new accounts of a specified type from a specified date (paragraphs (a) and (b));

prohibit the making of deposits into existing accounts of a specified type from a specified date (paragraphs (c) and (d));

require the closure of dormant accounts (i.e., those accounts into which new deposits are prohibited) when the customer makes a withdrawal after a specified date (paragraph (e));

provide for the transfer of deposits in a dormant account of a specified type into a different type of account in the customer's name (paragraph (f)) or into a special Director's account in the name of the Director of Savings to be held on the customer's behalf (paragraph (g)).

New section (4) defines "dormant account" and "special Director's account" for the purposes of new subsection (3).

12. Subsection (11) inserts new section 9A ("investment account terms and conditions") into the 1971 Act. New section 9A provides that the Treasury may introduce new types of investment accounts, after the passing of the Finance Act 2003, whose terms are set out in written Terms and Conditions rather than in regulations. The written Terms and Conditions may cover any matter on which the Treasury have power to make regulations under section 2 of the 1971 Act but could not override any regulation made under section 2 or order made under section 4. Any such Terms and Conditions are to be published by the Director of Savings in a manner approved by the Treasury. Thus, subsection (11) enables NS&I to offer any new account to customers on a contractual basis similar to that on which its bond or certificate products (securities issued by the Treasury under the National Loans Act 1968) are offered.

EXPLANATORY NOTE**CLAUSE 206: ABOLITION OF ACCOUNTING REQUIREMENTS
RELATING TO INVESTMENT DEPOSITS****SUMMARY**

1. This clause amends section 120 of the Finance Act 1980 (c.48). This amendment will remove the requirement imposed by that section on the Director of Savings to prepare annual accounts relating to investment deposits with the National Savings Bank, as these accounts are now prepared under the Government Resources and Accounts Act 2000.

DETAILS OF THE CLAUSE

2. The clause amends section 120 of the Finance Act 1980 (c.48) by omitting subsections (4) and (5). These subsections require the Director of Savings to prepare annual accounts of all sums received and paid in respect of investment deposits, of all sums paid into or received from the National Loans Fund, and of all sums received from the Consolidated Fund and require the Comptroller and Auditor General to audit those accounts and lay them together with his audit report on them before Parliament. These requirements are duplicated by requirements imposed in accordance with the Government Resources and Accounts Act 2000 and are thus no longer needed.

BACKGROUND

3. The accounts required to be prepared by subsection (4) and (5) of section 12 of the Finance Act 1980 are now prepared under a Treasury direction issued in accordance with section 7(1) of the Government Resources and Accounts Act 2000. These new accounts, together with accounts for all other National Savings and Investments products, are certified by the Comptroller and Auditor General and presented to Parliament in pursuance of the 2000 Act.

EXPLANATORY NOTE

CLAUSE 207: PAYMENTS FOR SERVICE OF THE NATIONAL DEBT

SUMMARY

1. This clause removes statutory references to ‘charges on the National Loans Fund for the service of the national debt’ and provides that payments from the Consolidated Fund to the National Loans Fund under section 15(1) should instead be based on the excess of National Loans Fund payments that represent interest on its liabilities, or which in the opinion of the Treasury should be treated as such, over the amounts paid into the Fund that represent interest on loans by the government, or which in the opinion of the Treasury should be treated as such.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 15 of the National Loans Act 1968 (which relates to payments to the National Loans Fund out of the Consolidated Fund for the service of the national debt) is to be amended as specified in the following subsections.

3. Subsection (2) amends the definition of the National Loans Fund payments that are to be taken into account in determining the deficit to be financed by the Consolidated Fund. The new definition defines those payments as interest payments on liabilities of the National Loans Fund or payments that the Treasury believe should be treated in the same way as such interest payments, rather than as ‘charges.... for the service of the national debt’.

4. Subsection (3) removes the statutory definition in section 15(3) of the 1968 Act of ‘charges on the National Loans Fund for the service of the national debt’.

5. Subsection (4) removes the provision in paragraph 13 of Schedule 5A to the 1968 Act that certain payments from the National Loans Fund to

the Debt Management Account are to be treated as charges on the National Loans Fund for the service of the national debt.

BACKGROUND

The National Debt

6. The current legislation ties certain transactions to a statutory definition of the 'national debt'. Essentially, this has been defined as the gross nominal liabilities of the National Loans Fund. However, this is a misleading definition for several reasons. Firstly, other public sector bodies hold National Loans Fund debt, so the aggregate 'national debt' overstates the government's liability to the rest of the economy. Secondly, borrowing by the Debt Management Account on its own account is not included in the definition. Thirdly, modern accounting practice would measure liabilities on a different basis.

7. The clause therefore provides for the removal of the outdated term 'service of the national debt' and replaces it with a new form of words that allows the Treasury the flexibility to amend the definition to keep it in line current requirements rather than being tied to an outdated statutory definition of liabilities.

EXPLANATORY NOTE

**CLAUSE 208: DEFINITION OF LIABILITIES AND ASSETS OF
NATIONAL LOANS FUND**

SUMMARY

1. This clause removes the present definition of the assets and liabilities of the National Loans Fund and provides that those assets and liabilities are to be as determined by the Treasury.

DETAILS OF THE CLAUSE

2. At present the liabilities of the National Loans Fund are defined as the nominal amount of the outstanding debt charged to the Fund and its assets are defined as the sum of the balance in the Fund and the outstanding principal due to the Fund. The clause removes these definitions and empowers the Treasury to determine the assets and liabilities of the Fund.

BACKGROUND

3. This change is necessitated by the proposed move to preparing accounts for the National Loans Fund on an accruals basis as UK accounting standards for accruals accounts require liabilities to be accounted for on a different basis. For example, the liability in respect of gilts will reflect discounts and premia that have not yet been amortised. A further important difference is that liabilities in respect of unpaid accrued interest will also have to be included. The clause gives the Treasury the necessary flexibility to determine the assets and liabilities of the Fund in a way that accords with changes in accounting standards and other developments.

EXPLANATORY NOTE

**CLAUSE 209: ACCOUNTS OF THE CONSOLIDATED FUND AND
THE NATIONAL LOANS FUND**

SUMMARY

1. This clause changes the accounting requirements for the Consolidated Fund and the National Loans Fund in section 21 of the National Loans Act 1968. With effect from financial year 2003/04 the requirement to produce such accounts on a receipts and payments basis is removed and is replaced by a less prescriptive requirement to produce accounts in such form and containing such information as the Treasury consider appropriate. Secondly, the requirement to provide annual statements of additional information regarding the transactions, assets and liabilities of these Funds is to be removed with effect from such financial year as the Treasury may determine by order.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 21 of the National Loans Act 1968 (which relates to the accounts of the Consolidated Fund and the National Loans Fund) is to be amended as specified in the following subsections.

3. Subsection (2) removes the requirement for the annual accounts for the Consolidated Fund and the National Loans Fund to be prepared on the basis of payments into and out of the Funds (ie a cash basis) and allows the Treasury to determine the form of the accounts and what information they should contain.

4. Subsection (3) removes the requirement for the Treasury to prepare and lay before Parliament supplementary statements for each financial year containing additional information about the transactions, assets and liabilities of the Funds.

5. Subsection (4) specifies that subsection (2) will have effect from the current financial year, 2003-04.
 6. Subsection (5) specifies that subsection (3) will have effect from such financial year as the Treasury may determine by order.
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BACKGROUND

7. These changes are part of the Government's agenda to modernise public accounts. They are needed to enable the accounts for the National Loans Fund to be prepared on an accruals basis. This is a necessary step in the process leading to the production of Whole of Government Accounts.
8. At present the legislation requires the Treasury to prepare:
 - i) separate accounts for the Consolidated Fund and the National Loans Fund of receipts and payments into and out of the Funds;
 - ii) statements of additional information regarding the transactions, assets and liabilities of the Funds.
9. There are no plans to change the basis of accounting for the Consolidated Fund. This reflects the status of the Consolidated Fund as a simple bank account that essentially pools tax revenue and redistributes it to finance government spending. The clause gives the Treasury discretion as to the form and content of the accounts of the Consolidated Fund and the National Loans Fund to enable it
 - a) to prepare the National Loans Fund account on an accruals basis, whilst maintaining the present cash basis of the Consolidated Fund account; and
 - b) to adjust the format of those accounts to take account of changes in accounting requirements. The Comptroller and Auditor General will continue to audit the accounts for both the Consolidated Fund and the National Loans Fund.
10. Using the new powers, the Treasury plans to prepare, with effect from financial year 2003-04, accruals accounts for the National Loans Fund containing the following elements:
 - a) an income and expenditure statement;
 - b) a balance sheet;
 - c) a cashflow statement (equivalent to 8 i) above); and
 - d) notes to the accounts.

11. The clause also removes the requirement for the Treasury to produce supplementary statements for the Consolidated Fund and the National Loans Fund (ie the statements referred to in paragraph 8 ii) above). This requirement is no longer needed because the National Loans Fund elements will largely be superseded by the notes to the National Loans Fund accounts, whilst in many cases the Consolidated Fund elements are or will be available elsewhere, such as departmental resource accounts or trust statements, or can be added into the account of the Consolidated Fund itself. The Treasury is currently discussing with the National Audit Office future arrangements for the handling of the material in these statements, including the four statements currently subject to voluntary audit by the C&AG. These discussions need to be brought to a satisfactory conclusion before the requirement to prepare supplementary statements can safely be removed. This change will therefore not come into effect until the Treasury so decrees by order.

EXPLANATORY NOTE

**CLAUSE 210: DEBT MANAGEMENT ACCOUNT:
ABOLITION OF CAP ON BORROWING**

SUMMARY

1. This clause removes the requirement of the Treasury to ensure that at the end of each day the liabilities of the Debt Management Account (DMA) resulting from its borrowing in the money markets do not exceed the sum of its deposits with the Bank of England and the National Loans Fund.

DETAILS OF THE CLAUSE

2. This clause repeals paragraph 8 of Schedule 5A to the National Loans Act 1968, thereby removing the cap on borrowing of the DMA imposed by that paragraph.

BACKGROUND

3. The DMA was established by the Finance Act 1998, which inserted Schedule 5A into the National Loans Act 1968. The UK Debt Management Office administers the DMA. As a new central government account that could borrow directly from the private sector, it was judged to be important that the statutory basis of the DMA should include a requirement to maintain high levels of readily available liquidity to demonstrate its on-going financial strength in the market. For this reason, paragraph 8 of Schedule 5A to the National Loans Act imposed a cap on borrowing by the DMA in the form of a requirement to ensure that the DMA's liabilities resulting from its borrowing in the money markets did not exceed the sum of its deposits with the Bank of England and the National Loans Fund.

4. There is an administrative cost involved in the daily monitoring of the cap on borrowing along with any follow-up action judged necessary to ensure that the cap is not breached. The cap has in fact never been breached and there have been no concerns raised by commercial lenders about the liquidity or credit status of the DMA.

The market instead properly sees the DMA as having the same credit status as the Treasury.

5. The cap on borrowing does not add value to the operations of the Debt Management Account. Removing it is a technical change that does not represent a loss of control or reduced quality of treasury management, but streamlines the administration of the Debt Management Account. The National Audit Office has approved the change.

EXPLANATORY NOTE

**CLAUSE 211: PAYMENTS IN ERROR FROM OR TO NATIONAL
LOANS FUND**

SUMMARY

1. This clause provides a power for the Treasury to repay in full or in part any amount that should not have been paid between the Debt Management Account and the National Loans Fund in respect of the net assets or liabilities of the Debt Management Account.

DETAILS OF THE CLAUSE

2. The clause amends paragraph 11 of Schedule 5A to the National Loans Act 1968, which empowers the Treasury to make payments from the National Loans Fund to the Debt Management Account when the liabilities of the Debt Management Account exceed its assets and to make payments in the opposite direction when the Account's assets exceed its liabilities. The clause provides a new power to repay in full or in part any such payment that should not have been made.

BACKGROUND

3. The Treasury wishes to use the existing power in paragraph 11 of Schedule 5A to make payments 'on account' towards the end of the financial year in respect of the estimated profit or loss of the Debt Management Account. This is intended to ensure that at least the main part of the annual net cost or profit of the DMA's operations is matched by a cash movement between the DMA and the National Loans Fund in the same financial year. However, the power has not yet been used because of the risk that the amount paid over 'on account' could prove to exceed the actual profit or loss, which cannot be established definitively until the

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accounts are finalised some time after the end of the financial year. The current powers do not permit the repayment of any such overpayments. The clause rectifies this gap by enabling the Treasury to repay any amount that should not have been paid.

SUPPLEMENTARY CLAUSES

CLAUSE 212: INTERPRETATION

1. This clause provides for the use of "the Taxes Act 1988" as an abbreviation for the Income and Corporation Taxes Act 1988.
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CLAUSE 213 AND SCHEDULE 43: REPEALS

2. This clause provides for the repeals contained in Schedule 43 of the Bill to have effect. It also gives effect to the Notes in the Schedule that set out the commencement provisions and savings applying to the repeals.
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CLAUSE 214: SHORT TITLE

3. This clause provides for the Bill to be known as the "Finance Act 2003" upon enactment.