

## SCHEDULE

Regulation 3

### PART 1

#### LIVING ACCOMMODATION AND RELATED BENEFITS

##### ***Accommodation provided by local authority***

1. Living accommodation if—
  - (a) it is provided by a local authority, and
  - (b) Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) would not have applied to the provision of that accommodation by virtue of section 98 of that Act (accommodation provided by local authority) if the employee had remained in that employment.

##### ***Accommodation provided for performance of duties - employees***

- 2.—(1) Living accommodation if—
  - (a) the employee had been in continuous occupation of the same or similar living accommodation during the five years immediately preceding the employee's retirement,
  - (b) throughout that period of five years—
    - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that accommodation by virtue of section 99 of that Act (accommodation provided for performance of duties), and
    - (ii) for any tax year before 2003-04, the accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99,
  - (c) the employee continued to occupy the same or similar accommodation after retirement.
- (2) In determining whether the occupation of living accommodation is continuous, the following breaks in occupation shall be disregarded—
  - (a) any one break not exceeding six months,
  - (b) breaks not exceeding one month each,
  - (c) breaks (of any duration) resulting from the employee's ill health.
- (3) Living accommodation is not within this paragraph if it is improved property.

##### ***Accommodation provided for performance of duties – members of employees' families***

- 3.—(1) Living accommodation provided to a member of the employee's family after the employee's death if—
  - (a) the employee died before retirement and Condition A is satisfied; or
  - (b) the employee died after retirement and Condition B is satisfied.
- (2) Condition A is that—
  - (a) the employee had been in occupation of the same or similar living accommodation at any time during the five years immediately preceding the employee's death,
  - (b) at any time during that period of five years—
    - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that accommodation by virtue of section 99 of that Act, or

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- (ii) for a tax year before 2003-04, the accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99,
- (3) Condition B is that the living accommodation was living accommodation described in paragraph 2 immediately before the employee's death.
- (4) In determining whether the occupation of living accommodation is continuous, the breaks in occupation mentioned in paragraph 2(2) shall be disregarded.
- (5) Living accommodation is not within this paragraph if it is improved property.

***Accommodation provided for ministers of religion***

- 4.—(1) Living accommodation if—
- (a) the employee had been employed as a minister of a religious denomination—
    - (i) for the period of five years immediately preceding the employee's retirement,
    - (ii) immediately preceding the employee's death, or
    - (iii) if the employee retired immediately after a period of ill-health, immediately preceding the beginning of that period, and
  - (b) at any time while the employee had been a minister, either—
    - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that or some other living accommodation provided to the employee by the employer by virtue of section 99 of that Act, or
    - (ii) for a tax year before 2003-04, such accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 99.
- (2) The condition in sub-paragraph (1)(a)(iii) is not satisfied unless and until the employer has received evidence from a registered medical practitioner that the employee is incapable of carrying on the occupation.

***Accommodation provided as result of security threat***

5. Living accommodation if—
- (a) at any time before the employee's retirement or death—
    - (i) Chapter 5 of Part 3 of ITEPA 2003 did not apply to the provision of that or similar accommodation provided to the employee by the employer by virtue of section 100 of that Act (accommodation provided as result of security threat), and
    - (ii) for any tax year before 2003-04, such accommodation attracted similar treatment for tax purposes by virtue of an enactment that was restated by section 100,
  - (b) except that the employment has been terminated, the conditions set out in paragraphs (a) to (c) of section 100 continue to be satisfied.

***Removal expenses***

- 6.—(1) A benefit provided by the employer in connection with a change of residence if—
- (a) it is a benefit of a description within section 280 of ITEPA 2003;
  - (b) there would have been no liability to income tax by virtue of section 271 of ITEPA 2003 if—
    - (i) the benefit had been provided in the course of the employment,
    - (ii) the change of residence had met the conditions in section 273 of ITEPA 2003,

- (iii) the last day of the tax year after that in which the change of residence occurred had constituted the limitation day;
  - (c) the former residence is living accommodation described in this Part.
- (2) If the cash equivalent of the benefit determined in accordance with the rules in section 203 of ITEPA 2003 exceeds £8,000—
- (a) the excess is not within the description in this paragraph; and
  - (b) in determining whether there would have been no liability to income tax by virtue of section 271 of ITEPA 2003 for the purposes of sub-paragraph (1)(b), the excess shall be disregarded.

#### ***Repairs and alterations to living accommodation***

7. Works—
- (a) in respect of which there would have been no liability to income tax by virtue of section 313 of ITEPA 2003 if they had been carried out in relation to living accommodation provided by reason of the employee's employment;
  - (b) that are carried out in relation to living accommodation described in this Part; and
  - (c) that do not have the effect of the living accommodation becoming improved property.

#### ***Council tax etc.paid for living accommodation***

8. Payments or reimbursements if—
- (a) they are of a description within section 314(2) of ITEPA 2003;
  - (b) section 314 would have applied to them if the living accommodation had been of a description within subsection (1) of that section;
  - (c) they are in respect of living accommodation described in this Part.

## PART 2

### INTERPRETATION OF PART 1

#### ***Similar accommodation***

9.—(1) All living accommodation is similar to other living accommodation unless, at the time the employee or member of the employee's family starts to occupy the new accommodation, its market value exceeds that of the accommodation occupied immediately prior to it by more than 20%.

(2) Where the living accommodation is not capable of being sold separately (whether because it forms part of larger premises in multiple occupation or otherwise), its market value shall be taken to be such amount as would be obtained if the factors that prevented its separate sale were disregarded.

#### ***Improved property***

10.—(1) Living accommodation is improved property if works have been carried out to it which—

- (a) materially improve it; and
- (b) are not carried out wholly for the purposes of complying with a statutory requirement or a requirement imposed by a government department, a statutory body or a person holding a statutory office.

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- (2) For the purposes of sub-paragraph (1), a property is materially improved by works if—
- (a) its market value on the date the works are substantially completed (“MVW”) exceeds what would have been its market value on that date if the works had not been carried out (“MV”); and
  - (b) the amount by which MVW exceeds MV is greater than 20% of MV.
- (3) Where the living accommodation is not capable of being sold separately (whether because it forms part of larger premises in multiple occupation or otherwise), both MVW and MV shall be taken to be such amount as would be obtained if the factors that prevented its separate sale were disregarded.
- (4) For the purposes of sub-paragraph (1)(b)—
- “statutory body” means a body set up by or under an enactment (including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament);
  - “statutory office” means a body set up by or under such an enactment; and
  - “statutory requirement” means a requirement imposed by provision made by or under such an enactment.

## PART 3

### OTHER BENEFITS

#### *Non-cash benefits received before 6th April 1998*

11. The provision of a non-cash benefit if—
- (a) it was received in connection with the termination of the employee’s employment,
  - (b) that termination took place before 6th April 1998.

#### *Welfare counselling*

12. The provision of welfare counselling which would have been exempted by virtue of the Income Tax (Benefits in Kind) (Exemption for Welfare Counselling) Regulations 2000(1) if it had been provided in the course of the employee’s employment.

#### *Recreational benefits*

13. The provision of recreational benefits if no liability to income tax would have arisen by virtue of section 261 of ITEPA 2003 if it had been provided in the course of the employee’s employment.

#### *Annual parties and similar functions*

14. The provision of an annual party or similar annual function if no liability to income tax would have arisen by virtue of section 264 of ITEPA 2003 if it had been provided in the course of the employee’s employment.

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(1) [S.I. 2000/2080](#).

***Writing of wills etc.***

15. The provision of a service for the writing of a will or similar testamentary document if the cash equivalent of the benefit determined in accordance with the rules in section 203 of ITEPA 2003 does not exceed £150.

***Equipment for disabled employees***

16.—(1) The provision of a benefit which—

- (a) was first provided in the course of the employee's employment; and
- (b) satisfied Conditions 1 to 5 of regulation 3 of the Income Tax (Benefits in Kind) (Exception for Employment Costs resulting from Disability) Regulations 2002<sup>(2)</sup> (“the 2002 Regulations”) at that time.

(2) The replacement, whenever provided, for a hearing aid or other equipment, services or facilities mentioned in Condition 3 of the 2002 Regulations where the aid, equipment, services or facilities are no longer usable or appropriate to the needs of the employee.

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(2) [S.I. 2002/1596](#).