

Guidance Note

The Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007

The Regulations (referred to hereafter as the "Excluded Benefits Regulations" come into effect for the tax year 2006-07 and subsequent years. They provide for certain benefits to be excluded benefits for the purposes of the legislation at S393B(3)(d) of the Income Tax (Earnings and Pensions) Act 2003. (ITEPA)

In this Note, where appropriate, references are made to those parts of the Employment Income Manual (EIM) that deal with the provision of benefits when in employment.

Non-cash benefits received before 6 April 1998

Any non-cash benefit, the provision of which began before 6 April 1998, is an excluded benefit if;

- it was received in connection with termination of the employee's employment, and
- the termination took place before 6 April 1998.

It is important to note that the requirement is that the provision of the non-cash benefit in retirement is received in connection with an employment that terminated before 6 April 1998 – it is not a requirement that the employee should have retired before that date or that the termination was itself by way of retirement.

Welfare counselling

The provision of welfare counselling is an excluded benefit if it would have been exempted under the Income Tax (Benefits in Kind) (Exemption for Welfare Counselling) Regulations 2000 had the recipient been provided with it in the course of their former employment. Under those regulations, welfare counselling provided to an employer's employees generally is exempt from tax on employment income.

Welfare counselling means counselling of any kind apart from:

- medical treatment of any kind, or
- advice on finance, other than advice on debt problems, or
- advice on tax, or
- advice on leisure or recreation, or
- legal advice.

If the counselling provided includes any of these, the exclusion does not apply.

Recreational benefits

The provision of recreational benefits is an excluded benefit if there would have been no income tax charge by virtue of s.261 ITEPA had the benefits been provided in the course of the former employee's employment.

[EIM21825](#) to [EIM21827](#) set out the circumstances in which recreational benefits provided for employees by an employer are exempt from tax.

Annual parties etc

The provision of an annual party or similar annual function is an excluded benefit if there would have been no income tax charge by virtue of s.264 ITEPA if been provided in the course of the former employee's employment.

[EIM21690](#) sets out the circumstances in which annual parties and other social functions provided for employees by an employer are exempt from tax.

Writing of wills etc

The provision to a former employee of a service for the writing of a will or similar testamentary document is an excluded benefit if the cash equivalent of the benefit determined in accordance with the rules of s.203 ITEPA does not exceed £150. [EIM21102](#) sets out how the s.203 rules apply.

Equipment for disabled former employees

The provision of equipment for disabled former employees is an excluded benefit if

- it was first provided in the course of the recipient's employment and,
- the benefit satisfies conditions 1 to 5 of regulation 3 of the Income Tax (Benefits in Kind) (Exception for Employment Costs resulting from Disability) Regulations 2002 SI 2002 No.1596.

This exemption also applies to replacement equipment where the original equipment is no longer usable or appropriate for the individual.

[EIM21846](#) summarises the operation of the exemption in relation to disabled employees

Living Accommodation

The provision of living accommodation can be an excluded benefit in the circumstances described below.

Some of these situations provide that living accommodation that was not a taxable benefit when it was provided to the individual as an employee will be an excluded benefit when it is provided in retirement.

Other situations extend the circumstances in which accommodation can be an excluded benefit to where it is provided to the family of an employee (or former employee) following death.

Accommodation provided by Local Authority

Where S98 ITEPA would have excluded the accommodation from being a taxable benefit had the employee remained in employment, its provision will be an excluded benefit. Generally, this is where the accommodation has been provided on terms that are no more favourable than those under which provision to non-employees in similar circumstances are made.

The provision to a member of the employee's family will also be an excluded benefit in the circumstances described in the penultimate section.

Accommodation provided for the performance of duties

[Note: Improved property is not within this exclusion. Living accommodation is improved property if it has had works carried out that

- materially improve it i.e. the works result in an increase of 20% or more in market value and,
- are not carried out wholly for the purpose of complying with statutory requirements or similar.]

1. Provided to Employees

Where S99 ITEPA (and earlier enactments) operated to exclude this as a taxable benefit, the provision will be an excluded benefit where

- the employee continuously occupied the accommodation or similar accommodation for a period of 5 years immediately prior to retirement, and
- continues to occupy the same or similar accommodation after retirement.

2. Provided to Members of Employees' Families

When the employee dies before retirement, the provision is an excluded benefit where

- the employee had occupied that or similar accommodation at any time in the 5 years preceding death, and
- at any time in these 5 years, S99 ITEPA (or an earlier enactment) operated to exclude the accommodation as a taxable benefit.

When the employee dies after retirement, the provision will be an excluded benefit provided that

- the employee had occupied the accommodation (or similar) during the 5 years immediately preceding retirement, and
- throughout that 5 year period, S99 ITEPA (or an earlier enactment) operated to exclude it from being a taxable benefit, and
- the employee continued to occupy the accommodation (or similar) after retirement.

Further details on the operation of S99 ITEPA can be found at [EIM11341](#) onwards.

Same or similar accommodation

Accommodation will be similar accommodation unless, at the time the employee (or member of the employee's family) starts to occupy the accommodation, the market value of the new accommodation exceeds that of the previous accommodation by more than 20%. In arriving at the value of living accommodation that cannot be sold separately, the market value shall be based on the accommodation as if the other factors did not exist.

Accommodation provided for Ministers of Religion

Where accommodation had been provided to the employee when employed as a minister of religion and S99 ITEPA (or a previous enactment) operated to exclude it as a taxable benefit, the provision of accommodation may be an excluded benefit.

This will be the case where the employee had been employed as a minister of a religious denomination

- for 5 years immediately preceding the employee's retirement, or
- where the employee retired after a period of ill health, immediately preceding the period of ill health.

The provision to a member of the employee's family will also be an excluded benefit in the circumstances described in the final section.

Where the employee has died, the provision of the accommodation will also be an excluded benefit where the employee had been employed as a minister of a religious denomination. Where the employee died before retirement, they must have been in such employment immediately preceding their death

Accommodation provided as a result of security threat

Where S100 ITEPA (or a previous enactment) operated to prevent the provision of accommodation from being a taxable benefit at any time before the employee's retirement or death, then the provision will be an excluded benefit when the employment has terminated provided the conditions at S100 (a) to (c) ITEPA continue to be satisfied. These conditions are that

- there is a special threat to the security of the employee

- special security arrangements are in force, and
- the employee resides in the accommodation as part of those arrangements.

There is a note of practical considerations at [EIM11362](#).

The provision to a member of the employee's family will also be an excluded benefit in the circumstances described in the final section.

Removal Expenses

S271 ITEPA provides an exemption from income tax for certain expenses incurred during a change of residence that are reimbursed to or paid on behalf of the employee. S280 ITEPA brings costs of transporting belongings within the exemption at S271. Such costs include the costs of moving belongings and insuring them during the move, the costs of packing and unpacking belongings and the costs of temporary storage. More detail can be found at [EIM03111](#).

Where such a benefit is provided in relation to a change of residence that comes within the categories described in these Regulations, it will be an excluded benefit provided that there would have been no liability by virtue of S271 if the benefit had been provided in the course of the employment assuming that

- the change of residence had met the conditions at S273, and
- the benefit was provided on or before the end of the tax year following that in which the change of residence occurred

If the cash equivalent of this benefit exceeds £8000 then the excess is not within this paragraph as far as determining whether it is an excluded benefit.

The provision to a member of the employee's family will also be an excluded benefit in the circumstances described in the final section.

Repairs & Alterations to Living Accommodation

Such work will be an excluded benefit if

- there would have been no liability by virtue of S313 ITEPA if it had been carried out on living accommodation provided by reason of the employee's employment (see [EIM 21620](#))
- it is carried out on any of the accommodation described in the Excluded Benefit Regulations, and
- the work does not cause the accommodation to become 'improved property' (see earlier).

The provision of such works for the benefit of an employee's family in the circumstances described in the final section is also an excluded benefit.

Council Tax etc paid for Living Accommodation

Payments or reimbursements of council tax or rates, water or sewerage charges will be an excluded benefit if

- S314 ITEPA would have applied if the accommodation had been provided by reason of a person's employment, and
- they are in respect of living accommodation described in the Excluded Benefit Regulations.

The provision to a member of the employee's family will also be an excluded benefit in the circumstances described in the final section.

Provision to the Employee's Family (other than accommodation provided for the performance of duties – see above)

The sections relating to living accommodation and related costs include a number of circumstances in which the provision to the employee's family is also an excluded benefit in certain circumstances. Those circumstances are after any of the following events

- the employee's death, (but see below further conditions for living accommodation provided to the families of deceased ministers of religion)
- the employee's taking up residence elsewhere as a result of ill-health, disability, infirmity or other physical or mental condition
- the employee's taking up residence elsewhere following a separation, annulment or divorce of a marriage or the nullity or dissolution of a civil partnership.

In the last 2 circumstances, the ex-spouse or ex-civil partner shall be treated as a member of the employee's family.

Families of deceased ministers of religion may continue to receive living accommodation as excluded benefits, so long as the death of the minister occurs when

- the minister was employed as a minister of religion immediately preceding death or
- if the minister died after retiring, the minister must have either been employed as a minister of religion for the 5 years before retiring or have retired on grounds of ill-health.