

REMINDER: WITHDRAWAL OF THE 'REPRESENTATIVE OCCUPIERS' CONCESSION FOR LIVING ACCOMMODATION FROM 6 APRIL 2021



Historically, a non-statutory exemption has applied in respect of employees provided with living accommodation and treated as representative occupiers since 5 April 1977. This exemption has also applied to successors to the particular post that carried representative occupier status.

This exemption is an Extra Statutory Concession (ESC) and therefore not in legislation. HMRC have undertaken a review of all ESCs and determined that this one would be withdrawn with effect from 6 April 2021.

A number of schools, colleges and universities have relied on this concession possibly without realising that it was not a statutory exemption. Employers will now need to review posts at risk and consider whether any of the statutory exemptions will apply. This could see many employers in the education sector having to consider whether they can still provide some staff with accommodation.

Approaching HMRC may be necessary to discuss any changes with the affected employees.

There are three potential statutory exemptions available.

1. Necessary for the proper performance

No tax charge arises where the employer can demonstrate that it is essential that an employee must live in a particular property to perform their duties. HMRC have accepted that the roles below meet this criteria:

- Agricultural workers who live on farms or agricultural estates
- Lock-gate and level crossing keepers
- Caretakers living on the premises (but only where there is a genuine full-time caretaking job)
- Stewards and green-keepers living on the premises, and
- Wardens of sheltered housing schemes who live on the premises and who are on call outside normal working hours (subject to certain conditions being met).

2. Customary and better performance

The employer will need to demonstrate that the employee can perform their duties better living in their employee accommodation than living elsewhere. The customary leg of the test requires there to be an industry practice of providing living accommodation. HMRC will accept that the definition of customary practice will require at least 50% of a particular role being provided with living accommodation. HMRC consider the following roles to meet the exemption:

- Police officers
- Ministry of Defence police
- Prison governors, officers and chaplains
- Clergymen and ministers of religion unless engaged on purely administrative duties
- Members of HM Forces
- Members of the Diplomatic Service
- Managers of newsagent shops that have paper rounds
- Managers of public houses living on the premises
- Managers of traditional off-licence shops with opening hours broadly equivalent to those of a public house
- Boarding schools where staff are provided with accommodation on or near the school premises, such as:
 - Headteacher
 - Teachers with pastoral or other irregular contractual responsibilities outside normal school hours (for example housemasters)
 - Bursar
 - Matron, nurse and doctor
- Stable staff of racehorse trainers who live on the premises and certain key workers who live close to the stables.

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3. Special security arrangements

No tax charge arises if living accommodation is provided where there is a special threat to the employee's security. In practice it is rare that employees qualify for this exemption.

Taxation of living accommodation

A taxable benefit arises where the provision of living accommodation does not fall within one of the exemptions.

The method of calculating the taxable benefit depends on whether the cost of providing the accommodation is more or less than £75,000. The cost of the accommodation is the cost of acquiring the property plus the cost of any improvements, less any contributions by the employee.

What next

The withdrawal of the representative occupier status is likely to have a significant impact on employers and employees in the education sector. Employers who provide living accommodation to staff should review the arrangements to ensure they can be covered by one of the statutory exemptions. Where this is not possible, it is time to consider future reporting requirements, employee engagement and whether contracts, arrangements, statutes etc. need to be changed before the concession is withdrawn.

Contact us

Please contact us if you would like us to assist you with a review of living accommodation provided to staff and guide you through any changes required.

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