

GUIDELINES TO TRAINERS

The Tax Treatment of Living Accommodation for Stable Staff

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I. INTRODUCTION

These guidelines set out the national agreement with H M Revenue and Customs (“HMRC”) on the tax and NIC treatment of living accommodation for stable staff. The NTF commends this agreement to its members as giving a fair and equitable result in most circumstances.

Full details are also provided on the tax and NIC treatment of board and lodging, living accommodation and costs of occupation. For more information see leaflet CWG2 - Employer Further Guide to PAYE and NICs and leaflet CWG5 – Class 1A National Insurance Contributions on Benefits in Kind.

Class 1A National Insurance Contributions (NICs) are payable on most benefits provided to employees by employers or arranged by employers. Employers may also have to pay Class 1 NIC on reimbursements to employees and bills settled on their behalf. If Class 1 NICs is payable Class 1A NICs are not payable on the same expense or benefit. Where a benefit is exempt from tax, Class 1A NICs will not be due. This guide contains information on the relevant Class 1 and Class 1A NIC liability in respect of the board and lodging, living accommodation and costs of occupation provided to employees.

Expenses which are the subject of an Inland Revenue dispensation are not to be reported on forms P11D and are not liable to tax or NICs.

II. BOARD AND LODGING

Definition of board and lodging

Board and lodging means accommodation where the employee cannot live independently (storing, preparing and cooking their own meals). Such board and lodging will include bed and breakfast, half or full board accommodation. It is important to distinguish “Board and Lodging” from “Living Accommodation” as the tax treatment is quite different (see page 4).

Tax treatment of board and lodging (N.B. other than Living Accommodation)

The tax treatment has changed from 6th April 2016 as the £8,500 threshold for taxing certain expenses and benefits in kind has been abolished and employees are treated the same way regardless of earnings.

The earnings are subject to tax on the cost of board and lodging borne by the employer whether provided within the curtilage¹ of the training establishment, reimbursed, paid as an allowance or met directly under an arrangement between the employer and the provider.

National Insurance Contributions (NICs)

Class 1 NIC is due in respect of payments reimbursed to the employee for board and lodging or where the employer settles the individual’s personal bill.

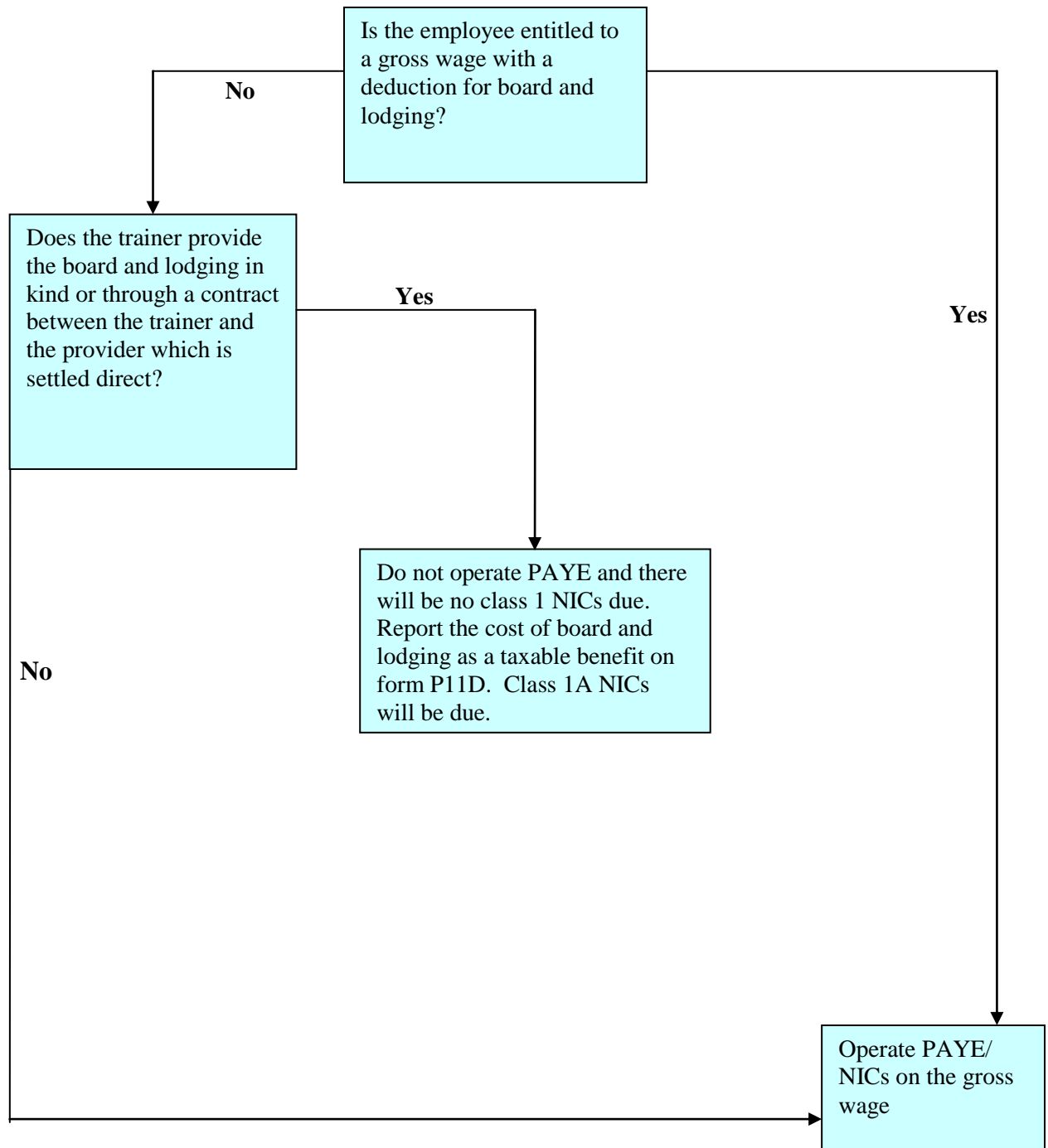
Board and lodging that is arranged by the employer and paid directly to the landlord/landlady by the employer will be liable to Class 1A NIC (see form P11D Section N 1.22).

¹ Living within the curtilage of the training establishment means living on land owned or rented by the employer (the trainer, training partnership or company, as the case may be) which adjoins or is within the boundary of the training establishment.

Tax Treatment of Board and Lodging

(Employee cannot sub-let, and is not reimbursed the cost)

Note Trainers should be aware that very few stable staff will meet the strict conditions for exemption from tax on board and lodging.



III. LIVING ACCOMMODATION

Definition of living accommodation

Living accommodation means accommodation where the employee has the use of a refrigerator and cooking facilities. Such accommodation could include a cottage, a hostel shared by a number of staff, a bed-sit or a room in a property rented or owned by another.

Living accommodation does not include board and lodging.

Tax Treatment of Living Accommodation (N.B. other than board and lodging)

Living accommodation provided by the employer by whatsoever means (owned or rented by the employer, or the cost of which is reimbursed) will be taxable on the employee regardless of the level of earnings unless he/she meets one of the conditions for exemption set out in (a) – (d) below. An employee will be exempt from tax on the accommodation itself providing:

- (a) the employee lives within the curtilage² of the training establishment (regardless of the employee's grade); or
- (b) the employee carries out the duties of the kind encompassed within Grade "A", as follows:
 - **Head Lad:** Full responsibility for yard and horses including feeding, veterinary care, staff management.
 - **Travelling Head Lad:** Full responsibility for horses and staff when travelling and at the races including declarations, saddling runners, post race care and veterinary treatment.
 - **Assistant Trainer:** Full responsibility in the yard and at the races in trainer's absence including office administration and entertaining owners.
 - **Senior Staff:** Stable Employees with plenty of experience. Capable of carrying out instructions without supervision. Able to take responsibility as required.

and in addition:

- (i) has access to motorised transport and lives within a 5 mile radius of the yard; or
- (ii) can otherwise reach the yard within 10 minutes; or

² Living within the curtilage of the training establishment means living on land owned or rented by the employer (the trainer, training partnership or company, as the case may be) which adjoins or is within the boundary of the training establishment.

- (c) the employer/employee can demonstrate to the satisfaction of the local Inspector of Taxes that the employee qualifies for exemption on other grounds. Such employees would have to meet the conditions set out in HMRC Manual EIM 11349 and EIM 11350 (Appendix 2); and

in any of the cases (a) – (c) above, the employee is not permitted to sub-let the property and the employee concerned has responsibility for looking after the horses outside normal working hours.

- (d) there is one other circumstance in which an employee can be exempt from tax on the provision of accommodation. Employees who were (with the agreement of HMRC) treated as exempt from tax on living accommodation up to 5 April 1977 will remain so providing the circumstances remain unchanged. This also applies to employees who succeed to a particular position where the predecessor was treated as exempt on living accommodation.

If the employee is exempt from tax on the accommodation, council tax and water rates on the property paid by the employer will also be exempt. There may, nevertheless, be tax to pay on the benefit of any costs of occupation borne by the employer, see page 6/7.

There are three cases where the exemption from tax will **not** apply:

- where the employee arranges the accommodation and the employer reimburses the employee;
- where the employee has the continuing right at any time to give up the accommodation and receive a higher wage. (NB this can be distinguished from those cases where the employee is free to choose which option he prefers but (say) having chosen the accommodation he does not have the right to give up the accommodation and demand the higher wage); or
- where the employee is a director of the company which provides the accommodation, the exemptions from tax will not normally apply unless the employee is a full time working director and he controls (together with relatives and certain others) less than 5% of the company. Professional advice should be sought in all cases as the provisions are complex.

If the employee is not exempt from tax on the accommodation, where the employer rents the accommodation, the employee will be subject to tax on an amount equal to the rent paid. Where the accommodation is owned by the employer (freehold or leasehold), the tax charge is based on the Gross Rateable Value (GRV) under the old property rating system which applied prior to the introduction of the Community Charge. GRV for properties can be obtained from the Local Council.

Exceptionally, if the purchase price of the property (or the lease premium if paid) plus the cost of any improvements, is over £75,000 then the taxable amount is more complex to calculate and you are advised to contact your tax advisor.

Where the employee has arranged the accommodation and the employer reimburses him/her, the employee is taxed (and subject to Class 1 NICs) on the amount reimbursed.

Where an employee has the continuing right at any time to give up the accommodation in return for a higher wage, he/she will be subject to tax on the wage forgone if greater than the amount otherwise chargeable. (NB: this does not apply in those cases where an employee was offered a higher wage and no accommodation, or a lower wage with accommodation, and having chosen does not have the right to give up the accommodation for the higher wage).

Where the employee is permitted to sub-let the property, he/she will be subject to tax on the rent which he/she can realise, if this is greater than the value otherwise chargeable.

Where more than one employee occupies the property (such as a cottage or hostel) the taxable amount should be divided amongst the occupants on a reasonable basis.

Finally, if an employee pays rent to the employer, or makes a contribution to expenses borne by the employer in relation to the property, these sums will reduce the taxable benefit pound for pound, but will not reduce the charge below zero.

National Insurance Contributions (NICs)

If the employee is exempt from tax on the living accommodation provided, there will be no Class 1A NIC liability on the accommodation provided.

Class 1A NIC will be due on the taxable value of living accommodation provided to employees who do not fulfil the criteria for tax exemption under Tax Treatment of Living Accommodation (a) to (d) on pages 4 and 5.

Costs of occupation

An employee will be taxable on the costs of occupation, whether or not he/she meets the conditions for exemption from tax on the accommodation itself. For example, any expenses borne by the employer which relate to:

- (a) heating, lighting or cleaning the premises;
- (b) internal decoration and repairs (but not repairs to the structure, electrical or heating installation);
- (c) the use of furniture and appliances and repairs to these; and
- (d) telephone bills.

Expenses under (a), (b) and (d) are taxed at cost; (c) is taxed annually at 20% of the cost of the items or their value when first provided as a benefit to any employee, together with any running costs. Where the living accommodation itself is exempt from tax, there is a limit to the value on which an employee is taxed for items included under (a), (b) and (c). The limit

is 10% of the employee's earnings after deducting any employee's pension contributions that qualify for tax relief.

Costs of Occupation - NICs

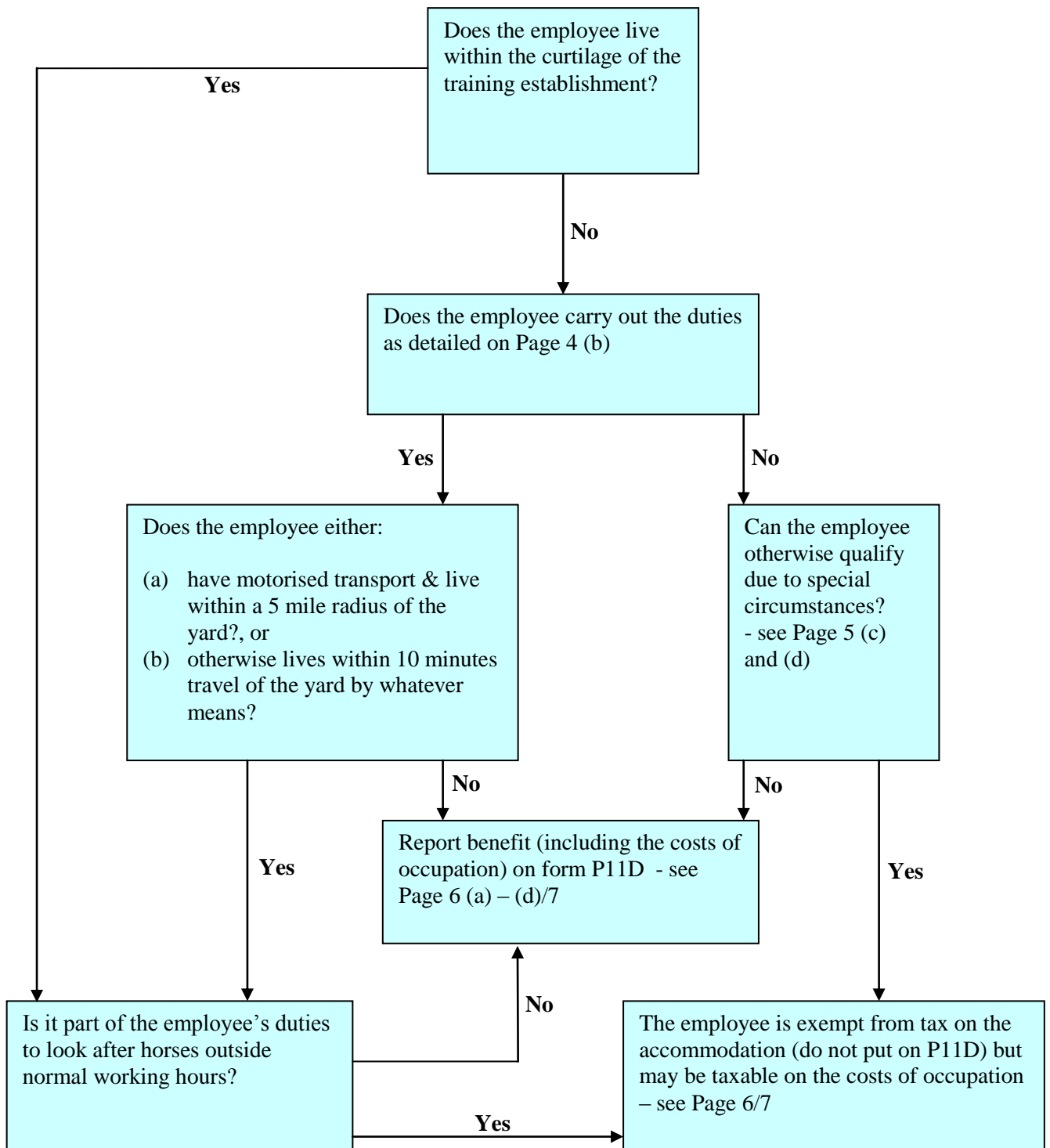
NICs will be due in respect of costs of occupation relating to the living accommodation as follows:

- **Class 1 NIC** – where personal bills of the employee are paid by the employer (i.e. where the employee has contracted with the supplier for services) for example heating, lighting, and cleaning or where such expenses are either reimbursed by the employer or paid by the employer to the provider on the employee's behalf.
- **Class 1A NIC** – will be due on the following
 - (a) facilities, for example heating, lighting, cleaning, where the employer has contracted with the provider and has paid the provider direct (this includes telephone bills, internal decoration and repairs, but not repairs to the structure, electrical or heating installations).
 - (b) the taxable value of the use of furniture and appliances owned by the employer which are placed at the employee's disposal (see page 6).

Living Accommodation

(Other than Board and Lodging)

(Employee cannot sub-let, is not reimbursed the cost nor has the right at any time to give up the accommodation in return for a higher wage)



IV. EXISTING AGREEMENTS AND STATUS OF THE GUIDELINES

Trainers may have an existing agreement with their Inspector of Taxes that certain employees are exempt from tax on the provision of living accommodation. Such agreements remain undisturbed providing circumstances remain substantially the same as when the agreement was entered into. It is good practice to review existing agreements from time to time. The guidance issued by H M Revenue and Customs head office to local tax districts at the time of issue of the previous guidelines in 1998 made it clear that the issue of the guidelines was not to be taken as an opportunity for Inspectors to revoke agreements and launch a wholesale review of the tax treatment of accommodation provided by trainers. It is to be expected that the guidelines will be influential in determining the tax treatment of living accommodation in the future as new cases arise and agreements are reviewed. It is also to be expected that the guidelines will be influential as a basis for settlement of past years where these are not covered by an agreement and are in dispute.

There may be cases where an existing agreement is now clearly invalid, for example where an agreement states that board and lodging is exempt when provided in kind via a landlady.

Trainers are recommended to adopt the guidelines. Where trainers do not wish to do so but are unsure as to whether circumstances have changed materially since their existing agreement was entered into, they should discuss the matter with the Inspector of Taxes responsible for the PAYE affairs of their training establishment and/or consult their professional adviser.

V. FORM P11D

You are recommended to adopt these guidelines when completing form P11D. Employees who, in accordance with these guidelines, are exempt from tax on the provision of board and lodging or living accommodation, should not have the accommodation itself reported on the form P11D, but please note that there may be items to report under the costs of occupation of the property (see page 6/7).

Although not obligatory, the NTF recommends that staff are told if the accommodation itself is exempt from tax and, therefore, has not been disclosed on their form P11D and does not need to be declared in their Tax Return (if required to complete one).

Where an employer returns benefits on a form P11D for the first time then the Inspector of Taxes may enquire about past years.

If you do not wish to adopt these guidelines because you have an existing agreement with your PAYE Inspector of Taxes, then H M Revenue and Customs has asked that you at least read the guidelines and discuss your agreement with that Inspector if circumstances have changed materially since your agreement was entered into.

VI. THE EMPLOYEE'S POSITION

As noted above, if any employee fails to meet the conditions for exemption under the guidelines, it is open to an employer or employee to seek to demonstrate to their local Inspector of Taxes that they otherwise meet the conditions for exemption in their own circumstances. For example, an individual may work for a smaller yard and strictly be grade "B" or below by reference to their experience yet are fulfilling the duties of a more senior position. There may be other exceptional circumstances applicable to an individual employee. Trainers are advised to discuss exceptional cases with their Inspector of Taxes.

Each employee has a personal responsibility to report any benefits received on their own Tax Return, if they receive one. If a Tax Return is not issued, then the employee has a duty, under Self Assessment, to write and disclose any new benefit to the Inspector of Taxes within six months of the end of the tax year in which the benefit first arose. This is the case even if the employer has reported the benefit on form P11D.

Frequently Asked Questions

<p>Question 1</p>	<p>An 18 year old works for us on a 40 hour week and is provided with living accommodation in one of our houses on the yard with two other employees. His basic wage is £240.00. Sometimes he fills up water buckets at night. Can we take £60.00 from gross wages as a contribution to his accommodation?</p>
<p>Answer 1</p>	<p>Tax</p> <p>To be exempt from tax on the living accommodation, part of the employee’s duties should be to look after the horses outside working hours (see flowchart page 8). Filling up of water buckets would not be sufficient for the employee to be exempt from tax on the benefit of the living accommodation. However, in reality, as the employee lives within the curtilage of the yard he would be “on call” and would respond to any emergencies and take responsibility for the horses assigned to his care and he would be exempt from any tax on the living accommodation provided.</p> <p>Deductions - You have to consider whether or not it would be legal to make the deductions. For more information see the NTF guidance on the National Minimum Wage and the accommodation offset on the NTF website.</p> <p>NMW*¹ for 40 hours @ youth rate of £5.55 = £222</p> <p>Maximum permitted deduction from NMW for accommodation = £42.00</p> <p>Minimum pay after accommodation deduction = £180.00</p> <p>If he were paid £240.00 – £60.00 = £160.00, he would be under paid by £20.00. You must give him at least either</p> <p>(a) £180.00 pay plus free accommodation; or,</p> <p>(b) pay him at least £240 less £60.00 for accommodation; or</p> <p>(c) £222.00 less a deduction of £42.00 for accommodation.</p> <p>Figures correct as at 1st October 2016</p>

Question 2	<p>We have a 17 year old who is in digs (board and lodging) in Newmarket. He is paid the minimum of £157.75 per week working 35 hours a week. With bonus and pool money he can expect another £1,000 a year. Can we pay him £107.75 per week plus free accommodation and £50.00 per week to the landlady?</p>
Answer 2	<p>Tax</p> <p>From April 2016 the different treatment of employee's earnings under £8,500 has been abolished.</p> <p>It will depend upon what his contract of employment states:</p> <p>If the contract of employment states that the employee earns £107.75 per week with free board and lodging, the provision of the board and lodging will be a benefit attracting Class 1A NICs as there is no longer any exemption for those paid under £8,500 even though it is arranged by the employer who settles the bills direct with the landlady.</p> <p>If the contract of employment states that the employee is paid £157.75 and £50.00 is deducted from his gross pay of £157.75 then he again will not be afforded the exemption on the value of the board and lodging. Tax will be deductible and Class 1 NIC will be due on the full £157.75 per week.</p> <p>Deductions</p> <p>However, you have to consider whether or not it would be legal to make the deductions.</p> <p>You must consider the national minimum wage (NMW)^{*1}.</p> <p>NMW for 35 hours @ youth rate £4.00 = £140.00</p> <p>Maximum deducted from NMW permitted for accommodation = £42.00</p> <p>Minimum permitted wage post accommodation deduction = £98.00</p> <p>If he were paid, £157.75-£50.00 = £107.75 he would be meeting the NMW requirements.</p> <p>The NTF/NASS minimum wage for a 16 year old is £4.14 per hour and the employee is being paid at this rate. (Figures correct as at 1st October 2016)</p>

Question 3	Our Assistant Trainer lives with his girlfriend on the yard. She works part time for us. She earns £120.00 per week. Is she exempt from tax on the accommodation? Rent is £40.00 per week.
Answer 3	<p>Tax</p> <p>Where it is clear that the accommodation is provided to the Assistant Trainer rather than the part-time employee (girlfriend) by virtue of her employment, no tax or NIC is due in respect of the accommodation on the girlfriend.</p> <p>The tax/NIC position of the provision of the accommodation to the Assistant Trainer would need to be addressed. In this particular instance the Assistant Trainer lives within the curtilage of the yard and his accommodation should be exempt from tax and NIC (flowchart page 8).</p>
Question 4	We have a 16 year old who has been at the racing school and has come to us. He is Grade D. We want to pay him £170 per week and to take £45.00 for the hostel. But do we take it from gross wages and pay him £125.00. This wage is in excess of the NTF/NASS minimum rate of £166.40. (Figures correct as at 1 st October 2016)
Answer 4	<p>Tax</p> <p>The question does not state whether the 16 year old is provided with board and lodging at the hostel, or just living accommodation (see pages 2 and 4 for definition).</p> <p>If the hostel provides board and lodging and he is provided with a gross wage and free accommodation, then the accommodation will be a benefit with Class 1A NIC as the exemption for those paid under £8,500 has been abolished.</p> <p>If he is provided with board and lodging and the employer deducts £45.00 for this from his gross wage, PAYE and Class 1 NIC should be deducted from the gross wage of £170.00.</p> <p>If the hostel provides living accommodation (see page 4) and the hostel is within the curtilage of the yard, the living accommodation would be exempt from tax. The living accommodation would not be exempt from tax if it was outside the curtilage of the yard as the employee is not Grade A (see flowchart page 8).</p>

*1 National Minimum Wage Rate current as at 1st October 2016

** Guidance on the accommodation offset and the effect on wages and the National Minimum Wage and National Living Wage is available to NTF members on the NTF website.

APPENDIX 2

EXTRACTS FROM H M REVENUE AND CUSTOMS'S EMPLOYMENT INCOME MANUAL

EIM11349 & EIM11350

11349

Living accommodation exemption:
The better performance test
Section 99(2) of ITEPA 2003

The “better performance” test is an objective one. The employee has to show that by occupying the accommodation provided he really can perform his duties better than if he lived elsewhere.

The test is not satisfied merely because accommodation is provided close to the place of employment so that the employee can get to work more easily. The duties of an employment do not normally begin until the employee arrives at his place of work. The distance he has to travel does not therefore affect the performance of those duties. Consequently it is necessary to look at the duties, if any, that are performed outside the employee's normal hours (including any normal unsocial hours) of attendance at his place of employment.

11350

Living accommodation exemption:
The better performance test –
Practical considerations
S145(4)(b) ICTA 1988.

You may accept that the accommodation is provided for the better performance of the duties of the employment if:

- the employee is required to be on call outside his normal hours; and
- he is, in fact, frequently called out; and
- the accommodation is provided so that he may have quick access to his place of employment or other place to which he is called.