

## SCHEDULES

### SCHEDULE 3

#### PROVISIONS SUPPLEMENTARY TO SECTION 38

##### PART I

###### DEFINITIONS OF CURRENT USE VALUE, MATERIAL DEVELOPMENT, ETC.

###### *Definition of current use value*

- 1 (1) For the purposes of the principal section and this Schedule the current use value of an interest in land shall be ascertained in accordance with this Part of this Schedule; and in this Part of this Schedule the time as at which current use value is to be ascertained is referred to as " the relevant time ".
- (2) Subject to the following provisions of this Part of this Schedule, the current use value of an interest in land at the relevant time is the market value of that interest at that time calculated on the assumption that it was at that time, and would continue to be, unlawful to carry out any material development of the land other than any material development thereof which, being authorised by planning permission in force at that time, was begun before that time.
- (3) In this paragraph " planning permission " has the same meaning as in the Town and Country Planning Act 1971, or, in Scotland, the Town and Country Planning (Scotland) Act 1972, or, in Northern Ireland, the Planning (Northern Ireland) Order 1972 ; and in determining for the purposes of this paragraph what material development of any land was authorised by planning permission at a time when there was in force in respect of the land planning permission granted on an outline application (that is to say, an application for planning permission subject to subsequent approval on any matters), any such development of the land which at that time—
- (a) was authorised by that permission without any requirement as to subsequent approval; or
  - (b) not being so authorised, had been approved in the manner applicable to that planning permission,
- but no other material development, shall for those purposes be taken to have been authorised by that permission at that time.

###### *Current use value—part disposals*

- 2 (1) Subject to sub-paragraphs (5) to (7) below, this paragraph shall apply as regards the current use value of an interest in land which has been disposed of by way of a part disposal of an asset (in this paragraph referred to as " the relevant asset ") consisting of an interest in land.

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- (2) The current use value at the relevant time of the interest disposed of shall be the relevant fraction of the current use value of the relevant asset at that time, calculated on the same assumptions as to the lawfulness or otherwise of any material development as fall to be made under this Schedule in calculating the current use value at that time of the interest disposed of.
- (3) For the purposes of the preceding sub-paragraph " the relevant fraction " means that fraction of the sums mentioned in the following sub-paragraph which under paragraph 7(2) of Schedule 6 to the Finance Act 1965 is, or would but for paragraph 7(4) of that Schedule be, allowable as a deduction in computing under that Schedule the amount of the gain accruing on the part disposal.
- (4) The sums referred to in the preceding sub-paragraph are the sums which, if the entire relevant asset had been disposed of at the time of the part disposal, would be allowable by virtue of paragraph 4(1)(a) and (b) of the said Schedule 6 as a deduction in computing under that Schedule the gain accruing on that disposal of the relevant asset.
- (5) Sub-paragraphs (2) to (4) above shall not apply—
- (a) in the case of a disposal of an interest in land by way of a part disposal if, on making the disposal, the person doing so no longer has any interest in the land which is subject to that interest; or
  - (b) in a case to which the following provisions of this paragraph apply.
- (6) In computing under this Chapter any gain accruing to a person on a part disposal of a lease which is a wasting asset by way of the grant of a sub-lease for a premium, the current use value of the lease at the time of its acquisition by the person making the disposal shall be the relevant fraction of what its current use value at that time would be apart from sub-paragraphs (2) to (4) above.
- (7) For the purposes of the preceding sub-paragraph " the relevant fraction " means that fraction of the expenditure attributable to the lease under paragraph 4(1)(a) and (b) of Schedule 6 to the Finance Act 1965 which under paragraph 4 of Schedule 8 to that Act (sub-leases out of short leases) falls to be apportioned to what is disposed of.
- 3 In computing under this Chapter any gain accruing to a person on a part disposal of an interest in land resulting under subsection (3) of section 22 of the Finance Act 1965 from the receipt as mentioned in paragraph (a), (c) or (d) of that subsection of a capital sum, the current use value at the relevant time of the interest out of which the part disposal was made shall be taken to be what it would have been at that time if the circumstances which caused the capital sum to be received had not arisen.

*Current use value—leases and reversions*

- 4 (1) The current use value of an interest in land which is either—
- (a) a freehold interest which is subject to a lease or an agreement for a lease ; or
  - (b) an interest under a lease or agreement for a lease,
- shall be ascertained without regard to any premium required under the lease or agreement for a lease or any sublease, or otherwise under the terms subject to which the lease or sublease was or is to be granted, but with regard to all other rights under the lease or prospective lease (and, for the current use value of an interest under a lease subject to a sublease, under the sublease).

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- (2) If under the preceding sub-paragraph an interest under a lease or agreement for a lease would have a negative value, the current use value of the interest shall be nil.
  - (3) If a lease is granted out of any interest in land after 17th December 1973, then, in computing under this Chapter any gain accruing on any disposal of the reversion on the lease made while the lease subsists, the current use value of the reversion at any time after the grant of the lease shall not exceed what would have been at that time the current use value of the interest in the land of the person then owning the reversion if that interest had not been subject to the lease.
  - (4) In the application of this paragraph to Scotland, " freehold " means the estate or interest of the proprietor of the dominium utile or, in the case of property other than feudal property, of the owner, and " reversion " means the interest of the landlord in property subject to a lease.
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- (1) In computing under this Chapter any gain accruing to a person on a disposal of a lease which is a wasting asset, the current use value of the lease at the time of its acquisition by the person making the disposal shall be the relevant fraction of what its current use value at that time would be apart from this paragraph.
  - (2) For the purposes of the preceding sub-paragraph " the relevant fraction " means the fraction of which the numerator is equal to so much of the expenditure attributable to the lease under paragraph 4(1)(a) and (b) of Schedule 6 to the Finance Act 1965 as is not under paragraph 1 of the computation under the said Schedule 6 of the gain accruing on the disposal, and the denominator is equal to the whole of the expenditure which would be so attributable to the lease for those purposes apart from the said paragraph 1.

#### *Definition of material development*

- 6 In this Schedule, subject to the following paragraph, " material development ", in relation to any land, means the making of any change in the state, nature or use of the land.
- 7
- (1) The doing of any of the following things in the case of any land shall not be taken for the purposes of this Schedule to involve material development of the land, that is to say—
    - (a) the carrying out of works for the maintenance, improvement, enlargement or other alteration of any building, so long as the cubic content of the original building is not exceeded by more than one-tenth ;
    - (b) the carrying out of works for the rebuilding, as often as occasion may require, of any building which was in existence at the relevant time, or of any building which was in existence in the period of ten years immediately preceding the day on which that time falls but was destroyed or demolished before the relevant time, so long as (in either case) the cubic content of the original building is not exceeded by more than one-tenth ;
    - (c) the use of any land for the purposes of agriculture or forestry, the use for any of those purposes of any building occupied together with land so used, and the carrying out on any land so used of any building of other operations required for the purposes of that use ;
    - (d) the carrying out of operations on land for, or the use of land for, the display of an advertisement, announcement or direction of any kind ;

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- (e) the carrying out of operations for, or the use of the land for, car parking, provided that such use shall not exceed three years ;
  - (f) in the case of a building or other land which at the relevant time was used for a purpose falling within any class specified in paragraph 8 below or which, being unoccupied at that time, was last used for any such purpose, the use of that building or land for any other purpose falling within the same class ;
  - (g) in the case of a building or other land which at the relevant time was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose at the relevant time or, as the case may be, one-tenth of the area of the land so used at that time ;
  - (h) in the case of land which at the relevant time was being temporarily used for a purpose other than the purpose for which it was normally used, the resumption of the use of the land for the last-mentioned purpose ;
  - (i) in the case of land which was unoccupied at the relevant time, the use of the land for the purpose for which it was last used before that time.
- (2) In determining for the purposes of sub-paragraph (1)(a) or (b) above whether or not the cubic content of the original building has been exceeded by more than one-tenth, the cubic content of the building after the carrying out of the works in question shall be treated as reduced by the amount (if any) by which so much of that cubic content as is attributable to one or more of the matters mentioned in the following sub-paragraph exceeds so much of the cubic content of the original building as was attributable to one or more of the matters so mentioned.
- (3) The matters referred to in the preceding sub-paragraph are the following, that is to say—
- (a) means of escape in case of fire ;
  - (b) car-parking or garage space ;
  - (c) accommodation for plant providing heating, air-conditioning or similar facilities.
- 8 The classes of purposes mentioned in paragraph 7(1)(f) above are the following—
- Class A—Use as a dwelling-house or for the purpose of any activities which are wholly or mainly carried on otherwise than for profit, except use for a purpose falling within Class B, C or E.
- Class B—Use as an office or retail shop.
- Class C—Use as a hotel, boarding-house or guest-house, or as premises licensed for the sale of intoxicating liquors for consumption on the premises.
- Class D—Use for the purpose of any activities wholly or mainly carried on for profit, except—
- (a) use as a dwelling-house or for the purposes of agriculture or forestry ;  
and
  - (b) use for a purpose falling within Class B, C or E.
- Class E—Use for any of the following purposes, namely—
- (a) the carrying on of any process for or incidental to any of the following purposes, namely—
    - (i) the making of any article or of any part of any any article, or the production of any substance;

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- (ii) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolishing of any article ; or
  - (iii) without prejudice to (i) or (ii) above, the getting, dressing or treatment of minerals,  
being a process carried on in the course of a trade or business other than agriculture or forestry, but excluding any process carried on at a dwelling-house or retail shop ;
- (b) storage purposes (whether or not involving use as a warehouse or repository) other than storage purposes ancillary to a purpose falling within Class B or C.

*Date when material development is begun*

- 9 (1) For the purposes of this Schedule material development shall be taken to be begun on the earliest date on which any specified operation comprised in the material development is begun.
- (2) In this paragraph " specified operation" means any of the following, that is to say—
- (a) any work of construction in the course of the erection of a building ;
  - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building ;
  - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in (b) above ;
  - (d) any operation in the course of laying out or constructing a road or part of a road ;
  - (e) any change in the use of any land.

*Interpretation*

- 10 (1) In this Part of this Schedule, unless the context otherwise requires—
- " agriculture " includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and " agricultural " shall be construed accordingly ;
  - " article " means an article of any description ;
  - " building " includes part of a building, and references to a building may include references to land occupied therewith and used for the same purposes ;
  - " forestry " includes afforestation ;
  - " minerals " includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working;
  - " retail shop " includes any premises of a similar character where retail trade or business (including repair work) is carried on;
  - " substance " means any natural or artificial substance or material, whether in solid or liquid form or in the form of a gas or vapour.

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- (2) Any reference in this Part of this Schedule to the cubic content of a building is a reference to that content as ascertained by external measurement.
- (3) For the purposes of paragraph 7(1)(a) and (b) of this Schedule where two or more buildings are included in a single development the whole of that development may be regarded as a single building, and where two or more buildings result from the redevelopment of a single building the new buildings may together be regarded as a single building.

For the purposes of this sub-paragraph two or more buildings shall not be treated as included in a single development unless they are or were comprised in the same curtilage.