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STATUTORY INSTRUMENTS

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**2009 No. 1544**

**INCOME TAX**

**The Income Tax (Qualifying Child Care) Regulations 2009**

<i>Made</i>	- - - -	<i>22nd June 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>23rd June 2009</i>
<i>Coming into force</i>	- -	<i>18th July 2009</i>

The Treasury make the following Regulations, in exercise of the powers conferred by section 318D(2) of the Income Tax (Earnings and Pensions) Act 2003<sup>(1)</sup>, and having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002<sup>(2)</sup> relating to entitlement to the child care element of working tax credit.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Income Tax (Qualifying Child Care) Regulations 2009.

(2) These Regulations come into force on 18th July 2009.

(3) In these Regulations “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003.

**Amendment of section 318(5) of ITEPA 2003**

2. In section 318(5) of ITEPA 2003<sup>(3)</sup> (exemption for employer-provided care), in paragraph (za), omit “Part 10A of the Children Act 1989<sup>(4)</sup> or”.

**Amendment of section 318C of ITEPA 2003**

3.—(1) Section 318C of ITEPA 2003<sup>(5)</sup> (meaning of “qualifying child care”) is amended as follows.

(2) In subsection (2)—

(a) omit paragraphs (a), (ea) and (g) (and the “or” before paragraph (g)), and

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(1) 2003 c.1. Sections 318 to 318D were substituted for section 318, as originally enacted, by paragraph 1 of Schedule 13 to the Finance Act 2004 c.12.

(2) 2002 c.21. S.I. 2009/697 contains the corresponding provisions this instrument is seeking to reflect.

(3) Section 318(5) was amended by regulation 2(a) of S.I. 2008/2170.

(4) 1989 c.41.

(5) Section 318C was relevantly amended by S.I. 2005/770, S.I. 2007/849 and S.I. 2008/2170.

- (b) insert “or” at the end of paragraph (c).
- (3) In subsection (3)(g) omit “in relation to a child other than one whom the foster parent is fostering”.
- (4) In subsection (7)—
  - (a) omit the “or” at the end of paragraph (b),
  - (b) in paragraph (c), omit “(2)(ea) or”, and
  - (c) at the end add
    - “, or
  - (d) if it is provided by a foster parent in respect of a child whom that foster parent is fostering”.

22nd June 2009

*Dave Watts*  
*Bob Blizzard*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend sections 318(5) and 318C of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) which provide for exemptions from income tax for employee benefits in respect of certain employer-provided or employer-contracted child care.

Regulation 2 amends section 318(5) of ITEPA 2003. The reference to Part 10A of the Children Act 1989 is repealed because there is no longer any child care provided in England for a child by persons registered under Part 10A of that Act.

Regulation 3 makes amendments to section 318C of ITEPA 2003.

Regulation 3(2) amends subsection (2). Paragraph (a) is repealed because there is no longer any child care provided in England for a child by persons registered under Part 10A of the Children Act 1989. Paragraph (ea) is repealed because the Tax Credits (Approval of Child Care Providers) Scheme 2005 (S.I. 2005/93) was revoked with transitional protection on 1st October 2007 by the Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 (S.I. 2007/2481). Paragraph (g) is repealed because, for the purposes of qualifying child care, a foster parent who provides child care (other than for a child whom he or she fosters) must register under Part 3 of the Childcare Act 2006 (c. 21). Consequential amendments are also made to this subsection because of the amendments made.

Regulation 3(3) repeals words in subsection (3). The insertion of new section 318C(7)(d) makes those words redundant.

Regulation 3(4) amends subsection (7), which excludes certain descriptions of care from the definition of “qualifying child care”. The reference in subsection (7)(c) to paragraph (ea) of subsection (2) is omitted because that paragraph is repealed by these regulations. A new paragraph (d) is inserted in subsection (7) which expressly excludes child care provided by a foster parent in respect of a child whom that foster parent is fostering. Consequential amendments are also made to this subsection because of the amendments made.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.