

**EXPLANATORY MEMORANDUM TO THE
INCOME TAX (QUALIFYING CHILD CARE) REGULATIONS 2009**

S. I. 2009 No. 1544

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before The House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

These regulations amend sections 318(5) and 318C of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) which provides for a limited exemption from income tax for employee benefits in respect of certain employer-provided or employer-contracted child care. These amendments are being made to maintain consistency with amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005), and to reflect changes that are being made to that Statutory Instrument.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

These regulations must come into force on 18 July 2009 to coincide with the effective date of the changes to relevant child care charges being introduced in the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I.2002 No. 2005).

4. **Legislative Context**

These regulations encompass various amendments to sections 318(5), and 318C of ITEPA which are of a consequential or technical nature.

5. **Territorial Extent and Application**

This instrument applies to all of the United Kingdom (UK).

6. **European Convention on Human Rights**

The Financial Secretary to the Treasury, Stephen Timms, has made the following statement: In my view, the provisions of the Income Tax (Qualifying Child Care) Regulations 2009 are compatible with Convention Rights.

7. **Policy background**

- **What is being done and why?**

Sections 318 to 318C of ITEPA contain the criteria which enables employer supported childcare to be exempt from tax. Exemptions from National Insurance

Contributions (NICs) follow the tax position. One of the key criteria is qualifying childcare – i.e. childcare that is regulated and inspected by the relevant bodies within the UK. Where changes are made to the regulation of childcare these must be reflected within the ITEPA provisions. These amendments are largely technical and have arisen due to changes to the regulation of childcare in England and the need to remove references to obsolete legislation within ITEPA.

Sections 318(5)(za) is amended in part and 318C(2)(a) is repealed because the Children Act 1989 is no longer the relevant legislation for the regulation of childcare in England.

The repeal of section 318C(2)(ea) is required due to the closure of the Childcare Approval Scheme (CAS) in England, as implemented by the Department for Children, Schools and Families (DCSF).

The repeal of section 318C(2)(g) is required to reflect DCSF policy in relation to the provision of care by foster parents in England. 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) in England.

The amendment to section 318C(3) is required as a consequence of the new provision at 318C(7)(d). There is no policy change arising from this amendment.

The new provision at 318C(7)(d) is to clarify that care provided by a foster parent for his or her own foster child is not qualifying childcare for the purpose of employer supported childcare.

- **Consolidation**

There are no plans to consolidate the relevant primary legislation within ITEPA that is being amended. No free informal consolidated text is available.

8. Consultation Outcome

There is no statutory requirement to consult on these regulations. However, HMRC has worked closely with DCSF in the development of these amendments and the amendments to Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005).

The HMRC Childcare Forum representing external stakeholders was informed of the scope and timing of these amendments in March 2009.

9. Guidance

Care providers affected by the closure of the CAS and foster carers in England have been notified by the DCSF of the need to register under Part 3 of the Childcare Act 2006 in order to remain as providers of qualifying childcare.

HMRC guidance relating to qualifying childcare will be amended to reflect these changes.

10. Impact

A full Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or the voluntary sector.

The changes to the employer supported childcare provisions within the ITEPA will have a negligible impact on the Exchequer.

11. Regulating small business

The legislation applies to businesses of all sizes who provide employer supported childcare. These amendments simplify the categories of qualifying childcare within England and are not expected to add to the administration burden of employers who provide employer supported childcare.

There are no reporting requirements for employers who provide employer supported childcare. HMRC collects no data that identifies businesses who provide employer supported childcare. The limited exemption from tax and NICs is available to all employers who wish to provide such assistance within the conditions set out in sections 318 to 318C of ITEPA.

HMRC has regular meetings and discussions with organisations and agents who operate employer supported childcare schemes on behalf of employers including small businesses. Employers concerns are communicated to HMRC mainly via their agents.

12. Monitoring and review

These amendments have arisen due to changes in the regulation of childcare in England. The new regulatory framework, in particular the changes introduced in the Childcare Act 2006 will be monitored and reviewed by DCSF.

13. Contact

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