
STATUTORY INSTRUMENTS

2009 No. 2888

INCOME TAX

**The Income Tax (Qualifying Child
Care) (No. 2) Regulations 2009**

<i>Made</i>	- - - -	<i>28th October 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>30th October 2009</i>
<i>Coming into force</i>	- -	<i>21st November 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⁽¹⁾, and having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002⁽²⁾ relating to entitlement to the child care element of working tax credit.

Citation and commencement

1.—(1) These Regulations may be cited as the Income Tax (Qualifying Child Care) (No. 2) Regulations 2009.

(2) These Regulations come into force on 21st November 2009.

Amendment of section 318C of the Income Tax (Earnings and Pensions) Act 2003

2.—(1) Section 318C of the Income Tax (Earnings and Pensions) Act 2003⁽³⁾ (meaning of “qualifying child care”) is amended as follows.

(2) In subsection (3)(g) omit “under the Fostering Services (Wales) Regulations 2003”.

(3) In subsection (4) at the end of paragraph (a) omit “or” and insert at the end—

“, or

(c) by a foster carer.”

(4) In subsection (5) at the end of paragraph (b) omit “or” and insert at the end—

“(d) by a foster parent, or

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

(2) 2002 c. 21. The relevant regulations are S.I. 2002/2005 as amended by S.I. 2004/1276, 2006/766 and 2009/2887.

(3) Section 318C was relevantly amended by S.I. 2005/770, 2007/849, 2008/2170 and 2009/1544.

(e) by a home child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006(4).”.

(5) In subsection (7)(d) for “in respect of a child whom that foster parent is fostering” substitute “, foster carer or kinship carer in respect of a child whom that person is fostering or is looking after as the child’s kinship carer”.

(6) After subsection (9) add—

“(10) In this section “foster parent” in relation to a child—

- (a) in relation to England, means a person with whom the child is placed under the Fostering Services Regulations 2002(5);
- (b) in relation to Wales, means a person with whom the child is placed under the Fostering Services (Wales) Regulations 2003(6); and
- (c) in relation to Northern Ireland, means a person with whom the child is placed under the Foster Placement (Children) Regulations (Northern Ireland) 1996(7).

(11) In this section—

“foster carer” and
“kinship carer”

have the meanings given in regulation 2 of the Looked After Children (Scotland) Regulations 2009(8).”.

28th October 2009

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of Her
Majesty’s Treasury

(4) S.R. (NI) 2006 No 64.

(5) S.I. 2002/57, amended by S.I. 2002/865; there are other amending instruments but none is relevant.

(6) S.I. 2003/237, to which there are amendments not relevant to these Regulations.

(7) S.R. (NI) 1996 No 467.

(8) S.S.I. 2009/210.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 318C of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”), which deals with the meaning of “qualifying child care” for the purposes of section 318A of ITEPA.

Regulation 2(2) removes wording in subsection (3)(g), which is now superfluous following the insertion of a general definition of foster parent in section 318C in these Regulations.

Regulation 2 also inserts new paragraphs in subsections (4) and (5) of that section. The paragraph inserted into subsection (4) replicates an equivalent provision at regulation 14(2)(b)(iii) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 ([SI 2002/2005](#)) (“the Entitlement Regulations”) as amended by the Tax Credits (Miscellaneous Amendments) (No. 2) Regulations 2009 ([S.I. 2009/2887](#)), which come into force on the same day as these Regulations. The paragraphs inserted into subsection (5) replicate provisions at regulation 14(2)(c)(iv) and (v) respectively of the Entitlement Regulations, which set out the categories of qualifying childcare in Northern Ireland.

Regulation 2(5) amends subsection (7)(d) to include a reference to a foster carer and kinship carer in Scotland as well as a foster parent in England, Wales and Northern Ireland.

Lastly, regulation 2 provides a definition of “foster parent” as that term is used in England, Northern Ireland and Wales and “foster carer” and “kinship carer” as those terms are used in Scotland.

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