



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 4

#### EMPLOYMENT INCOME: EXEMPTIONS

#### CHAPTER 11

#### MISCELLANEOUS EXEMPTIONS

#### *Childcare*

#### **[<sup>F1</sup>318 Childcare: exemption for employer-provided care**

- (1) [<sup>F2</sup>No liability to income tax arises] in respect of the provision for an employee of care for a child if conditions A to D are met.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, no such liability arises in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense,
  - (b) is resident with the employee, or
  - (c) is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that—

*Status: Point in time view as at 06/04/2006.*

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- (a) the premises on which the care is provided are not used wholly or mainly as a private dwelling, and
  - (b) any applicable registration requirement is met.
- (5) The registration requirements are—
- (a) in England and Wales, that under Part 10A of the Children Act 1989;
  - (b) in Scotland, that under Part 1 or 2 of the Regulation of Care (Scotland) Act 2001;
  - (c) in Northern Ireland, that under Part XI of the Children (Northern Ireland) Order 1995.
- (6) Condition C is that—
- (a) the premises on which the care is provided are made available by the scheme employer alone, or
  - (b) the partnership requirements are met.

In this section “scheme employer” means the employer operating the scheme under which the care is provided (who need not be the employer of the employee).

- (7) The partnership requirements are—
- (a) that the care is provided under arrangements made by persons who include the scheme employer,
  - (b) that the premises on which it is provided are made available by one or more of those persons, and
  - (c) that under the arrangements the scheme employer is wholly or partly responsible for financing and managing the provision of the care.
- (8) Condition D is that the care is provided under a scheme that is open—
- (a) to the scheme employer’s employees generally, or
  - (b) generally to those of the scheme employer’s employees at a particular location,

and that the employee to whom it is provided is either an employee of the scheme employer or is an employee working at the same location as employees of the scheme employer to whom the scheme is open.]

#### **Textual Amendments**

- F1** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F2** Words in s. 318(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(5\)](#)

#### **[<sup>F1</sup>318A Childcare: limited exemption for other care**

- (1) If conditions A to C are met in relation to the provision for an employee of care for a [<sup>F3</sup>child—
- (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.]

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For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, subsection (1) applies in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that the care is qualifying child care.

For the meaning of “qualifying child care”, see section 318C.

- (5) Condition C is that the care is provided under a scheme that is open—
- (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.
- (6) For the purposes of this section the “exempt amount”, in any tax year, is [<sup>F4</sup>£55] for each qualifying week in that year.
- (7) A “qualifying week” means a tax week in which care is provided for a child in circumstances in which conditions A to C are met.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

- (8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

- (9) An employee is not entitled to an exempt amount under this section and under section 270A (limited exemption for childcare vouchers) in respect of the same tax week.]

#### Textual Amendments

- F1** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F3** Words in s. 318A(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(6\)](#)
- F4** Sum in s. 318A(6) substituted (6.4.2006 with effect for the year 2006-07 and subsequent years of assessment) by [The Income Tax \(Exempt Amounts for Childcare Vouchers and for Employer Contracted Childcare\) Order 2006 \(S.I. 2006/882\)](#), arts. 1, 2

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### **[<sup>F1</sup>318B Childcare: meaning of “care”, “child” and “parental responsibility”**

- (1) For the purposes of sections 318 and 318A (exemptions for employer-provided or employer-contracted childcare) “care” means any form of care or supervised activity that is not provided in the course of the child’s compulsory education.
- (2) For the purposes of those sections a person is a “child” until the last day of the week in which falls the 1st September following the child’s fifteenth birthday (or sixteenth birthday if the child is disabled).
- (3) For the purposes of subsection (2) a child is disabled if—
  - (a) a disability living allowance is payable in respect of him, or has ceased to be payable solely because he is a patient,
  - (b) he—
    - (i) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services),
    - (ii) has been certified as blind in Scotland and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or
    - (iii) has been certified as blind in Northern Ireland and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board, or
  - (c) he ceased to be so registered as blind within the previous 28 weeks.
- (4) In subsection (3)(a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or, in Scotland, a young offenders’ institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975 or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.
- (5) For the purposes of sections 318 and 318A “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property.
- (6) In this section and section 318C “local authority” means—
  - (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, the council of a county or county borough;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.]

#### **Textual Amendments**

**F1** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

### **[<sup>F1</sup>318C Childcare: meaning of “qualifying child care”**

- (1) For the purposes of section 318A “qualifying child care” means registered or approved care within any of subsections (2) to (6) below that is not excluded by subsection (7) below.

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- (2) Care provided for a child in England is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child's 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999,
  - <sup>F5</sup>(e) . . . . .  
[ by a child care provider approved in accordance with the Tax Credits <sup>F6</sup>(ea) (Approval of Child Care Providers) Scheme 2005, or]
  - (f) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002.
- (3) Care provided for a child in Wales is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child's 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999 [<sup>F7</sup> or
  - (e) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004,]
- (4) Care provided for a child in Scotland is registered or approved care if it is provided—
- (a) by a person in circumstances where the care service provided by him—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 1 of that Act, or
  - (b) by a local authority in circumstances where the care service provided by the local authority—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 2 of that Act.
- (5) Care provided for a child in Northern Ireland is registered or approved care if it is provided—
- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995, or
  - (b) by an institution or establishment that does not need to be registered under that Part to provide the care because of an exemption under Article 121 of that Order, or

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- (c) in the case of care provided for a child out of school hours between the child's 12th birthday and the last day on which he is treated as being a child, by a school on school premises or by an education and library board or an HSS trust.
- (6) Care provided for a child outside the United Kingdom is registered or approved child care if it is provided by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 2002.
- (7) Child care is excluded from section 318A—
  - (a) if it is provided by the partner of the employee in question, or
  - (b) if it is provided by a relative of the child wholly or mainly in the child's home or (if different) the home of a person having parental responsibility for the child<sup>F8</sup>, or
  - (c) in the case of care falling within subsection (2)(ea), if—
    - (i) it is provided wholly or mainly in the home of a relative of the child, and
    - (ii) the provider usually provides care there solely in respect of one or more children to whom the provider is a relative.]
- (8) In subsection (7)—
  - “partner” means one of a <sup>F9</sup>couple (within the meaning given by section 137(1) of SSCBA 1992 or section 133(1) of SSCB(NI)A 1992] ; and
  - “relative” means parent, grandparent, aunt, uncle, brother or sister, whether by blood, half blood or marriage <sup>F10</sup>or civil partnership]
- <sup>F11</sup>(9) [ In subsection (7)(c), “relative in relation to a child, also includes—
  - (a) a local authority foster parent in relation to the child,
  - (b) a foster parent with whom the child has been placed by a voluntary organisation,
  - (c) a person who fosters the child privately (within the meaning of section 66 of the Children Act 1989, or
  - (d) a step-parent of the child.].]

#### Textual Amendments

- F1** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 13 para. 1](#)
- F5** S. 318C(2)(e) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\), regs. 1\(1\), 3\(a\)](#)
- F6** S. 318C(2)(ea) inserted (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\), regs. 1\(1\), 3\(b\)](#)
- F7** S. 318C(3)(e) and preceding word added (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\), regs. 1\(1\), 4](#)
- F8** S. 318C(7)(c) and preceding word added (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\), regs. 1\(1\), 5](#)
- F9** Words in s. 318C(8) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 144\(a\)](#)
- F10** Words in s. 318C(8) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 144\(b\)](#)

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**F11** S. 318C(9) inserted (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), 6

### [<sup>F1</sup>318D Childcare: power to vary exempt amount and qualifying conditions

- (1) The Treasury may by order amend section 318A(6) (employer-contracted care: the exempt amount) so as to substitute a different sum of money for that for the time being specified.
- (2) The Treasury may by regulations make such amendments of the provisions of sections 318 to 318C relating to the qualifying conditions for the exemptions conferred by sections 318 and 318A as appear to them appropriate having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the child care element of working tax credit.]

#### Textual Amendments

**F1** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

**Status:**

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