

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (QUALIFYING CHILD CARE) REGULATIONS 2008**

**2008 No. 2170**

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. **Description**

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 bring the provisions on qualifying child care into line with those in the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I.2002 No. 2005), including to reflect changes that are being made to that Statutory Instrument in consequence of the changes to the regulation of child care in England made by the Childcare Act 2006.

The details of the amendments are:

- Regulation 2 makes the amendments to section 318(5) of ITEPA.
- Regulation 2(a) inserts a new (z)(a) to cover the new registration requirements under Part 3 of the Childcare Act 2006 for England.
- Regulation 2(b) amends paragraph (a) to refer only to the registration requirements relevant to Wales.
- Regulation 3 makes the amendments to section 318C of ITEPA.
- Regulation 3(2)(a) repeals subsection (2)(b) because Schedule 9A to the Children Act 1989 was amended by paragraph 18 of Schedule 2 to the Childcare Act 2006 so that it no longer applies to England. This means that care provided in an appropriate children's home, a care home, as a patient in a hospital and in a residential family centre will no longer be "qualifying child care".
- Regulation 3(2)(b) inserts a new (ba) so that care provided in England by a person registered under Part 3 of the Childcare Act 2006 is qualifying childcare.
- Regulation 3(2)(c) replaces subsection (2)(c) with reference to care provided by or under the direction of the proprietor of a school on the school premises, subject to the limitations in new subsection (2B). This is intended to clarify the care provided by schools that is "qualifying child care". The reference to the proprietor of a school reflects the terms of the

exemptions for schools from the registration requirements under Part 3 of the Childcare Act 2006.

- Regulation 3(2)(d) repeals subsection (2)(eb) because the Childcare (Voluntary Registration) Regulations 2007 (S.I. 2007 No. 730) have been revoked by regulation 3 of the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008 No. 975).
- Regulation 3(2)(e) amends subsection (2) by inserting a new paragraph (g) so that qualifying child care includes child care provided by foster parents in England other than to children that they are fostering.
- Regulation 3(3) inserts a new subsection (2A) defining “proprietor”, “school” and “school premises” for the purpose of the new subsection 2(c). It also inserts a new subsection (2B) limiting the care that is qualifying child care under subsection (2)(c).
- Regulation 3(4) amends subsection (3) by inserting a new paragraph (g) so that qualifying child care includes child care provided by foster parents in Wales other than to children that they are fostering.

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

These regulations must come into force on 1 September 2008 to coincide with the implementation of Part 3 of the Childcare Act 2006. The late implementation of these regulations is due to lengthy consultation with the Department for Children, Schools and Families (DCSF) policy and legal advisers on a number of issues including the status of childcare provided by local authorities. This means that HMRC has, regrettably on this occasion, breached the 21 day rule.

### **4. Legislative background**

Section 318C of ITEPA sets out the various categories of qualifying childcare for the purpose of the provisions relating to employer supported childcare. These regulations amends the definition of qualifying childcare to reflect the changes that DCSF are implementing through regulations under the Childcare Act 2006.

These regulations are made under powers conferred on the Treasury by section 318D(2) to make amendments of the provisions of section 318-318C relating to the qualifying conditions for the exemptions by regulations, having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the childcare element of working tax credit.

### **5. Territorial Extent and Application**

The amendments to section 318C(2) apply to England only. The amendments to section 318C(4) apply to Wales only.

## **6. European Convention on Human Rights**

The Financial Secretary to the Treasury, Jane Kennedy, has made the following statement: In my view, the provisions of these draft Regulations are compatible with Convention Rights.

## **7. Policy background**

The limited exemption from tax and National Insurance for employer supported childcare is available only in respect of qualifying childcare. For these purposes qualifying childcare currently includes childcare that is provided by:

- a provider who is registered or approved by the appropriate body in England, Wales, Scotland or Northern Ireland;
- a school, out of school hours, on school premises;
- a local authority; or
- a domiciliary care worker.

Section 318C of ITEPA sets out the various categories of qualifying childcare. This regulation will amend the definition of qualifying childcare to reflect the changes brought about by the Childcare Act 2006.

The Childcare Act 2006 introduced new, simplified arrangements for the regulation and inspection of childcare and early education in England. From 1 September 2008 there will be two Ofsted registers for childcare providers in England, the Early Years Register (EYR) (in respect of children aged 0-5 years) and the Ofsted Childcare Register (OCR) (comprising a compulsory part in respect of children aged 6-7 years and a voluntary part in respect of children aged 8 and over).

For the purposes of employer supported childcare any childcare that is registered with Ofsted, whether on the EYR or the OCR (including both the compulsory part (Part A) and the voluntary part (Part B)) will be regarded as qualifying childcare, so that parents who use such childcare may receive the limited exemption from income tax and National Insurance Contributions if their employer provides access to employer supported childcare schemes. ITEPA is therefore being amended to reflect the changes that the DCSF are implementing through regulations under the Childcare Act 2006.

## **8. Impact**

A Regulatory 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 negligible impact on the Exchequer.

## Consultation

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 Working Tax Credit (Entitlement and Maximum Rate) Regulations.

### 9. **Contact**

The lead official is:

Steve Gentle  
HM Revenue & Customs  
Benefits & Credits Group  
100 Parliament Street  
London  
SW1A 2BQ  
Tel: 020-7147-2482  
E-mail: [Steven.m.gentle@hmrc.gsi.gov.uk](mailto:Steven.m.gentle@hmrc.gsi.gov.uk)