

**EXPLANATORY MEMORANDUM TO THE  
INCOME TAX (QUALIFYING CHILD CARE) (No. 2) REGULATIONS 2009**

**2009 No. 2888**

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**

- 2.1 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. These amendments are being made to maintain consistency with the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“the Tax Credit Regulations”), and to reflect changes made to those Regulations.

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

- 3.1 None.

4. **Legislative Context**

- 4.1 These Regulations encompass various amendments to section 318C of ITEPA which are of a consequential or technical nature. They reflect amendments to the Tax Credit Regulations brought about by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations 2004 (S.I. 2004/1276) and the Tax Credits (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/766). These Regulations are also made to reflect amendments to the Tax Credit Regulations, brought about by the Tax Credits (Miscellaneous Amendments) (No 2) Regulations 2009 (S.I. 2887), which come into force on the same day as these Regulations.

- 4.2 These Regulations must come into force on 21 November 2009 to coincide with the effective date of the changes to child care being introduced in the Tax Credit Regulations.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

The Financial Secretary to the Treasury, Stephen Timms, has made the following statement regarding Human Rights:

In my view, the provisions of the Income Tax (Qualifying Child Care) (No 2) Regulations 2009 are compatible with Convention rights.

## **7. Policy background**

### **• What is being done and why?**

7.1 Sections 318 to 318C of ITEPA contain the criteria which enables employer supported childcare to be exempt from tax and National Insurance Contributions (NICs). One of the key criteria is qualifying childcare – i.e. childcare that is regulated and inspected by the relevant bodies within the United Kingdom. Where changes are made to the regulation of childcare these must be reflected within the ITEPA provisions. These amendments are being made due to the introduction of the Looked After Children (Scotland) Regulations 2009 and the need to further align the criteria for qualifying childcare between ITEPA and the Tax Credit Regulations.

7.2 Section 318C(4) has been amended by the addition of new subsection (c) to reflect the corresponding amendment to the Tax Credit Regulations arising from the Looked After Children (Scotland) Regulations 2009.

7.3 Section 318C(5) has been amended by the addition of new subsections (d) and (e) to reflect the existing provisions with the Tax Credit Regulations in relation to the provision of qualifying childcare in Northern Ireland.

7.4 Section 318C(7) has been amended to include a reference to a foster carer and kinship carer in relation to Scotland.

7.5 Section 318C(10) has been added to include a definition of foster parent in relation to England, Wales, and Northern Ireland.

7.6 Section 318C(11) has been added to include a definition of foster carer and kinship carer in relation to Scotland.

### **• Consolidation**

7.7 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**

8.1 There is no statutory requirement to consult on these Regulations. However, HMRC has worked closely with the relevant devolved authorities in the development of these amendments and those to the Tax Credit Regulations.

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

## **9. Guidance**

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

## **10. Impact**

10.1 An Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

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

## **11. Regulating small business**

11.1 The legislation applies to businesses of all sizes who provide employer supported childcare. These amendments further align the categories of qualifying childcare between the ITEPA provisions relating to employer supported childcare and tax credits. These amendments are not expected to add to the administration burden of employers who provide employer supported childcare.

11.2 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.

11.3 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**

12.1 These amendments have arisen due to changes in the regulation of childcare in Scotland. The regulation of childcare in the United Kingdom is monitored and reviewed by the Department for Children, Schools and Families or relevant devolved authority.

## **13. Contact**

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