

EXPLANATORY MEMORANDUM TO
THE EMPLOYER SUPPORTED CHILDCARE (RELEVANT EARNINGS
AND EXCLUDED AMOUNTS) REGULATIONS 2011

2011 No. 1798

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. **Purpose of the instrument**

- 2.1 This instrument specifies what are "relevant earnings" and "excluded amounts" for the purposes of estimating the relevant earnings amount described in sections 270B and 318AA of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) inserted by Schedule 8 of the Finance Act 2011. These sections provide for limited tax relief where employers provide qualifying childcare vouchers or contract directly with childcare providers. As a result of these changes the amount of tax relief is determined on the basis of an estimate of an employee's relevant earnings amount for the tax year.

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

- 3.1 This instrument has retrospective effect back to 6th April 2011 pursuant to paragraph 9 of Schedule 8 to the Finance Act 2011 which provides that regulations made under sections 270B(3)(b) or (4) of ITEPA 2003 on or before 31 December 2011 may have retrospective effect in relation to the tax year 2011-12.

- 3.2 Two Tax Information and Impact Notes covering this instrument were published in December 2010 alongside draft Finance Bill 2011 provisions and one was further updated in March 2011 and published with Budget documentation. These are available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. They remain an accurate summary of the impacts that apply to this instrument.

4. **Legislative Context**

- 4.1 These Regulations are made by Her Majesty's Treasury under sections 270B(3)(b) and (4) ITEPA, and it is the first use of those powers.

- 4.2 Where an employer provides childcare support in the form of childcare vouchers or directly contracted childcare one of the conditions for obtaining tax relief is that an employer has carried out an estimate of the relevant

earnings amount of any employee joining the employer's childcare scheme on or after 6th April 2011. The relevant earnings amount applies only to income relating to a particular employment.

4.3 If the estimate of relevant earnings indicates that the employee is a higher earner, the level of the amount of childcare support on which tax relief is available is restricted. The levels are £55 per week for basic rate taxpayers, £28 per week for employees at the higher rate of tax, and £22 per week for employees at the additional rate of tax.

4.4 This instrument sets out the types of income to be included in the estimate of relevant earnings and amounts which are excluded from that estimate.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 In the June 2010 Budget, the Government confirmed that it would implement the previous policy decision to restrict the value of tax relief available for employer-supported childcare to the value received by basic rate taxpayers, that is, approximately £11 per week. The measure only applies to individuals joining employer-supported childcare schemes on or after 6th April 2011.

7.2 It supports the Government's objective of making the tax relief for employer-supported childcare fairer and better targeted.

8. Consultation outcome

8.1 The primary legislation was published in draft in December 2010 as part of the consultation process for the Finance Bill. As a result of that consultation and further representations received from external stakeholders after the consultation period that legislation was amended for publication of the Finance Bill and in Committee.

8.2 This instrument has been drafted in liaison with external stakeholders.

9. Guidance

9.1 The relevant HMRC guidance will be amended in line with these Regulations.

10. Impact

10.1 The impact of this instrument on business is £nil as it merely implements detail of the legislation which has already been costed. The impacts and related costs are set out in the Tax Information and Impact Notes already published for section 35 of the Finance Act 2011 which introduced these changes, and referred to in paragraph 3.2 above.

10.2 No impact on the public sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small businesses if they provide employer-supported childcare. HMRC will amend their external guidance to support employers and employees.

11.2 HMRC has regular contact with industry groups which include representatives of small business, such as the Federation of Small Businesses. These representatives have been involved in the consultation process.

12. Monitoring and Review

12.1 This policy will be monitored and assessed alongside other measures in the Government's package of personal tax and benefits changes.

13. Contact

Mrs Su McLean-Tooke at HMRC Tel: 020 7147 2665 or email: susan.mclean-tooke@hmrc.gsi.gov.uk can answer any queries regarding this instrument.