

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (QUALIFYING CHILD CARE) REGULATIONS 2011**

**2011 No. 775**

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 sets out the definitions of qualifying childcare for the purposes of the exemption from income tax and National Insurance Contributions for employer supported childcare. These amendments are being made to maintain consistency with the definition of qualifying childcare set out in the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005) (“the Entitlement Regulations”), and to reflect changes that are being made to that Statutory Instrument.

2.2 These regulations must come into force on 6th April 2011 to coincide with the effective date of the changes to qualifying childcare being introduced in the Entitlement Regulations, brought about by the Tax Credits (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/721), which comes into force on the same date as these Regulations.

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

3.1 None.

4. **Legislative Context**

4.1 These Regulations encompass amendments to sections 318(5) and 318C of the ITEPA to reflect changes to the regulation of childcare in Wales, Northern Ireland and Scotland and to ensure greater consistency with regard to the type of childcare provision that can be treated as qualifying childcare across all parts of the United Kingdom.

5. **Territorial Extent and Application**

5.1 The amendments to section 318(5) and 318C(3) apply to Wales only. The amendments to section 318C(4), (7) and (11) apply to Scotland only. The amendments to 318C(5) apply to Northern Ireland only.

## 6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Justine Greening, has made the following statement regarding human rights:

“In my view, the provisions of the Income Tax (Qualifying Child Care) Regulations 2011 are compatible with Convention Rights.”

## 7. Policy background

- *What is being done and why*

7.1 Section 318 of ITEPA sets out the conditions relating to the exemption from income tax and the disregard for NICs for employer-provided childcare, including the requirements for care providers to register in accordance with the relevant legislation in the constituent parts of the United Kingdom.

7.2 Section 318C of ITEPA contains the definitions of qualifying childcare – i.e. childcare that is regulated and inspected by the relevant bodies within the United Kingdom. These amendments have been implemented following consultations with the devolved authorities in Scotland, Wales and Northern Ireland regarding the status of foster parents (in Wales and Northern Ireland) and foster carers or kinship carers (in Scotland) as providers of qualifying childcare in relation to children other than those for whom they are acting as a foster carer or foster parent - hereafter referred to as “other children”.

7.3 Within England and Scotland a foster parent/foster carer providing childcare for other children must register in accordance with the relevant childcare regulations for children up to the age of 16 years.

7.4 Within Wales and Northern Ireland, a foster parent providing childcare for other children was unable to register as a childcare provider for children aged between 15 and 16 years.

7.5 These amendments enable a foster parent providing care for other children aged between 15 and 16 years to be a provider of qualifying childcare providing they are registered under the relevant foster care regulations applicable to Wales and Northern Ireland as appropriate.

7.6 Section 318(5)(a) and sections 318C(3)(a) and (b) are amended to reflect changes to the regulation of childcare in Wales. Section 318C(3)(g) is amended so that a foster parent in Wales can be a provider of qualifying childcare in relation to other children aged 15-16 years where registration under other childcare registration is not available.

7.7 Section 318C(4)(c) is repealed following consultation with the Scottish Government so that foster carers providing care to other children in Scotland must register in accordance with the Regulation of Care (Scotland) Act 2001 (2001 asp 8). Consequential amendments are made by way of amendment of paragraph (d) of section 318C(7) and the removal of section 318C(11).

7.8 Section 318C(5)(d) is deleted and new section 318C(5)(f) is introduced so that a foster parent in Northern Ireland can be a provider of qualifying childcare in relation to other children aged 15-16 years where registration under other childcare regulation is not available.

7.9 There are no plans to consolidate the instrument 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 devolved authorities in Scotland, Wales and Northern Ireland in the development of these amendments and the amendments to the Entitlement Regulations.

## **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 prepared for this instrument because 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 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 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 the relevant regulations.

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.

## **12. Monitoring and review**

12.1 These amendments have arisen due to a review of the registration requirements and status of foster carers as providers of qualifying childcare in all parts of the UK. The review of any changes to the regulation of childcare is undertaken by the relevant authorities within each part of the UK.

12.2 These amendments do not affect the nature of the exemptions from tax and NICs for employer supported childcare, but reflect the policy within each part of the UK as to the type of childcare that can be treated as qualifying childcare.

## **13. Contact**

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