

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (QUALIFYING CHILD CARE) REGULATIONS 2019**  
**2019 No. 902**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument updates the definition of 'qualifying childcare' within the Employer Supported Childcare regime. Employer Supported Childcare, specifically both childcare vouchers and childcare for which the employer pays the care provider directly, is tax exempt. This is capped, dependent on the employee's taxable earnings.
- 2.2 The definition of 'qualifying childcare' requires the care to be regulated by certain authorities, which varies by the area within or outside the United Kingdom (UK) where the care is provided and the type of care, and is defined by references to the relevant legislation.
- 2.3 This instrument is needed to include the new legislative references for the legal definition within 'qualifying childcare' for two separate sets of regulations that have been revoked.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 The Right Honourable Mel Stride MP, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of The Income Tax (Qualifying Child Care) Regulations 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 Section 270A and 318A of the Income Tax (Earnings and Pensions) Act 2003 provide tax exemptions where an employer provides their employee with childcare vouchers or directly pays for their employee's childcare respectively (jointly known as Employer Supported Childcare). Both sections rely on a definition of 'qualifying childcare', which is contained within section 318C.
- 6.2 For care of children within their own home, for parents in England, the definition of qualifying childcare is defined within the Domiciliary Care Agencies Regulations 2002. The Domiciliary Care Agencies Regulations 2002 were revoked by the Health and Social Care Act 2008 (Commencement No. 16, Transitory and Transitional Provisions) Order 2010 and this reference needs to be updated.
- 6.3 For care of children outside the UK, specifically provided for by Ministry of Defence childcare providers, the definition of qualifying childcare is defined within the Tax Credit (New Category of Child Care Provider) Regulations 2002. These Regulations have lapsed and the reference needs to be updated.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Parents can receive tax exempt Employer Supported Childcare. Employer Supported Childcare is comprised of childcare vouchers (where a parent receives a tax exempt voucher which they can spend on childcare), directly-contracted childcare (where the employers pay the childcare provider directly) and workplace nurseries (where an employer can provide childcare within the workplace). The exempt amount of both childcare vouchers and directly contracted childcare are subject to a monetary cap, the value of which is dependent on the parent's income.
- 7.2 To ensure certain standards of care are met, the childcare provider must be registered or approved by a relevant authority (for example, but not limited to, The Office for Standards in Education). The relevant authorities are defined in law by reference to the regulations which give the relevant authority their powers. This varies by region of the UK.
- 7.3 The Domiciliary Care Agencies Regulations 2002 covered childcare provided in the home by a domiciliary worker or nurse in England. These regulations were revoked in 2010 and the regulation of domiciliary care is now governed by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. This instrument will update this definition.
- 7.4 Childcare provided outside the United Kingdom cannot generally be accepted as "qualifying childcare" as it is outside of the jurisdiction of UK inspection and registration. The only exception to this is childcare provided by a person approved under a Ministry of Defence accreditation scheme abroad. The Tax Credit (New Category of Child Care Provider) Regulations 2002 which provided for the regulatory framework for this childcare have lapsed and the regulation of this child care is now governed by regulation 14(2)(d)(i) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002. This instrument will update this definition.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 There is no plan to consolidate the Income Tax (Earnings and Pensions) Act 2003.

## **10. Consultation outcome**

10.1 This instrument supports an existing policy, which has already been subject to consultation.

## **11. Guidance**

11.1 The guidance in the Employment Income Manual (at [EIM 22030](#)) will be updated in May 2019 soon after the instrument is laid. There is no significant change to the guidance as the instrument merely maintains the existing position.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector as this instrument continues an existing position.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing regulatory standards.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to amend the existing definition to keep this in line with current practice.

13.3 The basis for the final decision on what action to take to assist small businesses is that the instrument is simply maintaining the current legislative position.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is to monitor and review it, as appropriate, within the context of the wider tax framework. This instrument will have minimal impact as it maintains the existing legislative framework.

14.2 The regulation does not include a statutory review clause because of a tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

15.1 Neil Henderson at HM Revenue and Customs. Telephone: 03000 544705 or email: [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jackie McGeehan Deputy Director for the Income Tax policy at the HM Revenue and Customers can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Right Honourable Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.