

**EXPLANATORY MEMORANDUM TO THE
SECTION 318C INCOME TAX (EARNINGS AND PENSIONS) ACT 2003
(AMENDMENT) REGULATIONS 2005**

2005 No.770

1. This explanatory memorandum has been prepared by the Treasury 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**

- 2.1 These Regulations make amendments to section 318C of the Income Tax (Earnings and Pensions) Act 2003 (inserted by Schedule 13 to the Finance Act 2004) which introduced the tax exemptions for employer-supported childcare. The amendments relate to childcare.
- 2.2 The purposes of the Regulations are to add persons approved under the Tax Credits (Approval of Child Care Providers) Scheme 2005 (“CAP”) to section 318C(2). This will extend the categories of “qualifying child care” for tax relief purposes. The CAP applies to England only.
- 2.5 Regulations 2 and 3 of the Regulations amend Section 318C(2) of the Income Tax (Earnings and Pensions) Act 2003. It provides tax relief for parents using child carers approved under the Scheme.
- 2.6 Regulation 4 also introduces as “qualifying childcare” providers who are domiciliary care workers under the Domiciliary Care Agencies (Wales) Regulations 2004. This is an up-dating amendment which aligns the types of “qualifying care” with those used for the childcare element of Working Tax Credit.
- 2.7 Regulation 5 excludes tax relief for childcare in the same circumstances as are excluded from the operation of CAP by Article 5(2) of the 2005 Scheme. That exclusion is where a relative of the child is providing the care in a relative’s home, and only caring for their own or related children.

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

- 3.1 These Regulations have been made and laid less than 21 days before they come into force. As they extend the categories of childcare eligible for tax relief, their effect on taxpayers is wholly relieving. It has not been possible to make the Regulations earlier, owing to the need to avoid the immediate pre-Budget period, and to obtain the comments of Parliamentary Counsel (as the Regulations amend primary legislation).

4. **Legislative Background**

4.1 These Regulations are subject to the negative resolution procedure. The powers exercised to make these Regulations are set out section 318D(2) of the Income Tax (Earnings and Pensions) Act 2003.

5. Extent

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 The Paymaster General, Dawn Primarolo M.P., has made the following statement regarding Human Rights:

In my view, the provisions of the Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2005 are compatible with the Convention Rights

7. Policy background

7.1 The purpose of the new exemptions is to provide a better incentive, and to make it easier for employers to offer support to employees with Childcare costs. They will widen the range of good quality childcare that qualifies for tax relief in order to best suit the needs of employees and employers. Specifically, the exemptions aim to:

- Advance the Government's strategy on childcare to promote safe, good and quality childcare;
- Provide incentives and wider options to encourage more employers to support such childcare provisions for staff; and
- Put the tax and NICs treatment of employer-supported childcare on the same footing.

8. Impact

8.1 These Regulations do not impose any new costs on business.

9. Contact

Denis Fitzgerald at the Inland Revenue [tel: 020 7147 2506 or e-mail: Denis.Fitzgerald@ir.gsi.gov.uk] can answer any queries regarding the instrument.