

**EXPLANATORY MEMORANDUM TO**  
**THE SECTION 318C INCOME TAX (EARNINGS AND PENSIONS) ACT 2003**  
**(AMENDMENT) REGULATIONS 2018**

**2018 No. 308**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by HM 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, dependant 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 of the UK and type of care, and is defined by legal references.

2.3 The Welsh Government is changing the way it regulates care within the home. As such, the legal definition within ‘qualifying childcare’ needs to be updated to reflect the new legislative reference.

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

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

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 Sections 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. For care of children within their own home, for parents in Wales, the definition of qualifying childcare is defined within the Domiciliary Care Agencies (Wales) Regulations 2004.

4.2 The Regulation and Inspection of Social Care (Wales) Act 2016 reforms regulation of social care within Wales. As a consequence it repeals certain existing regulatory regimes, including the Domiciliary Care Agencies (Wales) Regulations 2004.

- 4.3 This instrument is a consequential amendment to ensure that parents in Wales, who have care within the home, can continue to receive tax relief for Employer Supported Childcare as intended.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.  
5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Financial Secretary to the Treasury 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 2018 are compatible with the Convention rights.”

## **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 employer pays 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 with a relevant authority. 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 Regulation of social care is a devolved matter for Wales. The Welsh Government is changing the way it regulates social care within Wales, with a phased implementation. From 3 April 2018, the regulation of care within the home is changing.
- 7.4 Employer Supported Childcare provides, in certain limited circumstances, for the care of the child within the home. To ensure parents in Wales, who have childcare within the home, continue to receive tax exempt Employer Supported Childcare as they previously did, a technical update is required.

### *Consolidation*

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

## **8. Consultation outcome**

- 8.1 The instrument supports an existing policy, which has already been subject to consultation.

## **9. Guidance**

- 9.1 Guidance will be updated as necessary.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 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.

## **12. Monitoring & review**

- 12.1 No monitoring or review is considered necessary.

## **13. Contact**

- 13.1 Alexander Raisen at HM Revenue & Customs Telephone: 03000 542 663 or email: [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.