

2008 No. 2170

INCOME TAX

The Income Tax (Qualifying Child Care) Regulations 2008

Made - - - - *13th August 2008*

Laid before the House of Commons *14th August 2008*

Coming into force - - *1st September 2008*

The Treasury make the following Regulations in exercise of the powers conferred by section 318D(2) of the Income Tax (Earnings and Pensions) Act 2003(a).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Qualifying Child Care) Regulations 2008 and shall come into force on 1st September 2008.

Amendment of section 318(5) of the Income Tax (Earnings and Pensions) Act 2003

2. In section 318(5) of the Income Tax (Earnings and Pensions) Act 2003 (exemption for employer-provided care)—

(a) before paragraph (a) insert—

“(za) in England, that under Part 10A of the Children Act 1989(b) or Part 3 of the Childcare Act 2006(c);”;

(b) in paragraph (a), omit “England and”.

Amendment of section 318C of the Income Tax (Earnings and Pensions) Act 2003

3.—(1) Section 318C of that Act(d) (meaning of “qualifying child care”) is amended as follows.

(2) In subsection (2)—

(a) omit paragraph (b);

(b) after that paragraph insert—

“(ba) by a person registered under Part 3 of the Childcare Act 2006;”;

(c) for paragraph (c) substitute—

“(c) by or under the direction of the proprietor of a school on the school premises (subject to subsection (2B));”;

(a) 2003 (c. 1); sections 318 to 318D were substituted for section 318 by paragraph 1 of Schedule 13 to the Finance Act 2004 (c. 12).

(b) 1989 (c. 41).

(c) 2006 (c. 21).

(d) Section 318C was relevantly amended by S.I. 2007/849.

- (d) omit paragraph (eb) (and the “or” after it);
 - (e) at the end insert—
 - “, or
 - (g) by a foster parent under the Fostering Services Regulations 2002(a) in relation to a child other than one whom the foster parent is fostering.”
- (3) After that subsection insert—
- “(2A) In subsection (2)(c)—
- “proprietor”, in relation to a school, means—
- (a) the governing body incorporated under section 19 of the Education Act 2002(b), or
 - (b) if there is no such body, the person or body of persons responsible for the management of the school;
- “school” means a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the “Chief Inspector”) is or may be required to inspect;
- “school premises” means premises that may be inspected as part of an inspection of the school by the Chief Inspector.
- (2B) Care provided for a child in England is not registered or approved care under subsection (2)(c) if—
- (a) it is provided during school hours for a child who has reached compulsory school age, or
 - (b) it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.”
- (4) In subsection (3)—
- (a) omit the “or” after paragraph (e);
 - (b) at the end insert—
 - “, or
 - (g) by a foster parent under the Fostering Services (Wales) Regulations 2003(c) in relation to a child other than one whom the foster parent is fostering.”

Alan Campbell
Dave Watts

13th August 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend sections 318(5) and 318C of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) which provide for exemptions from income tax for employee benefits in respect of certain employer-provided or employer-contracted child care.

Regulation 2 makes the amendments to section 318(5) of ITEPA.

Regulation 2(a) inserts a new paragraph (za) so that applicable registration requirements in England include the new registration requirements under Part 3 of the Childcare Act 2006.

(a) S.I. 2002/57.
(b) 2002 (c. 32).
(c) S.I. 2003/237 (W.35).

Regulation 2(b) amends paragraph (a) to refer only to the registration requirements relevant to Wales.

Regulation 3 makes the amendments to section 318C of ITEPA.

Regulation 3(2)(a) repeals subsection (2)(b) because Schedule 9A to the Children Act 1989 was amended by paragraph 18 of Schedule 2 to the Childcare Act 2006 so that it no longer applies to England. This means that care provided in an appropriate children's home, a care home, as a patient in a hospital and in a residential family centre will no longer be "qualifying child care".

Regulation 3(2)(b) inserts a new paragraph (ba) in subsection (2) so that care provided in England by a person registered under Part 3 of the Childcare Act 2006 is "qualifying child care".

Regulation 3(2)(c) replaces subsection (2)(c) with a reference to care provided by or under the direction of the proprietor of a school on the school premises, subject to the limitations in new subsection (2B). This is intended to clarify the care provided by schools that is "qualifying child care". The reference to the proprietor of a school reflects the terms of the exemptions for schools from the registration requirements under Part 3 of the Childcare Act 2006.

Regulation 3(2)(d) repeals subsection (2)(eb) because the Childcare (Voluntary Registration) Regulations 2007 (S.I. 2007/730) have been revoked by regulation 3 of the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975).

Regulation 3(2)(e) amends subsection (2) by inserting a new paragraph (g) so that qualifying child care includes child care provided by foster parents in England other than to children that they are fostering.

Regulation 3(3) inserts a new subsection (2A) defining "proprietor", "school" and "school premises" for the purpose of the new subsection (2)(c).

It also inserts a new subsection (2B) limiting the care that is qualifying child care under subsection (2)(c). This excludes care provided during school hours for a child who has reached compulsory school age, reflecting the definition of "childcare" in section 18(3)(a) of the Childcare Act 2006. It also excludes care provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.

Regulation 3(4) amends subsection (3) by inserting a new paragraph (g) so that qualifying child care includes child care provided by foster parents in Wales other than to children that they are fostering.

An Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.