EXPLANATORY MEMORANDUM TO

1. THE WORKING TAX CREDIT (ENTITLEMENT AND MAXIMUM RATE) (AMENDMENT No.2) REGULATIONS 2007

2007 No. 2479

2. THE TAX CREDIT (NEW CATEGORY OF CHILD CARE PROVIDER) (REVOCATION) (ENGLAND) REGULATIONS 2007

2007 No. 2480

3. THE INCOME TAX (QUALIFYING CHILD CARE) (No.2) REGULATIONS 2007

2007 No. 2478

4. THE TAX CREDITS (CHILD CARE PROVIDERS) (MISCELLANEOUS REVOCATION AND TRANSITIONAL PROVISIONS) (ENGLAND) SCHEME 2007

2007 No. 2481

1. 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) and the Department for Children, Schools and Families (DCSF) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This explanatory memorandum covers four statutory instruments – three sets of regulations made by the Treasury, and one scheme made by the Secretary of State for Children, Schools and Families.

2.2 The four statutory instruments bring an end to two schemes which approve childcare: the Scheme provided for by Tax Credit (New Category of Child Care Provider) Regulations 1999 ("the 1999 regulations") whereby the Secretary of State accredits organisations (known as "quality assurance schemes") which approve childcare provided for children aged eight and over; and the Scheme provided for by the Tax Credits (Approval of Child Care Providers) Scheme 2005 ("the 2005 Scheme") under which an approval body approves childcare provided in the child's home.

2.3 Childcare which has been approved is "qualifying childcare", and parents who use it may be entitled to financial benefits. Charges made for childcare provided by an approved child care provider may be taken into account when determining a person's entitlement to the childcare element of working tax credit (provided for by the Tax Credits Act 2002 ("the 2002 Act"). There is a limited exemption from income tax liability for 'employer-supported childcare vouchers', directly contracted childcare and workplace nurseries (provided for under the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA")) and a similar exemption from National Insurance contributions (provided for under the Social Security (Contributions) Regulations 2001)..

2.4 Together, the Tax Credit (New Category Of Child Care Provider) (Revocation) (England) Regulations 2007 and the Tax Credits (Child Care Providers) (Miscellaneous Revocation And Transitional Provisions) (England) Scheme 2007 revoke the 1999 regulations, with transitional provision. Consequential amendments are made to ITEPA and the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 ("the 2002 regulations").

2.5 In addition to revoking the 1999 regulations, the Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 also revokes the 2005 Scheme, with transitional provision.

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

None, save as set out in paragraph 4.1.

4. Legislative Background

4.1 The 1999 regulations were made under section 15(1) and 15(4) of the Tax Credits Act 1999 ("the 1999 Act"). The 1999 Act was repealed by the 2002 Act, but the 1999 regulations continued to have effect by virtue of section 17(2)(b) of the Interpretation Act 1978 as regulations under section 12(4)(b) of the 2002 Act and as a scheme under section 12(5) of that Act. As a consequence of the re-enacted power lying in both section 12(4)(b) and 12(5), revocation of the 1999 regulations is being brought about by two instruments.

4.2 The Tax Credit (New Category of Child Care Provider) (Revocation) (England) Regulations 2007 use the power in section 12(4)(b) of the 2002 Act to partially revoke the 1999 regulations in England to the extent that they prescribe a class of persons whose charges may be taken into account when determining eligibility for working tax credit. The Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 uses the power in section 12(5) of the 2002 Act to revoke the remainder of the 1999 regulations. This Scheme is made by the Secretary of State as the "appropriate national authority" (section 12(6)(a) of the 2002 Act). Transitional provision is made to provide officers of HMRC with continued access to information and records relating to accredited organisations and child care providers approved by such organisations, by virtue of the requirements set out in regulations 11 and 12 of the 1999 regulations.

4.3 The Working Tax Credit (Entitlement and Maximum Rate) (Amendment No.2) Regulations 2007 make consequential changes to regulation 14 of the 2002 regulations. Regulation 14 of the 2002 regulations prescribes the meaning of childcare charges for the purposes of "child care" for the purposes of determining a claim for working tax credit. The reference to the 1999 Scheme is removed in respect of England and inserted in the sub-paragraph relating to Wales.

4.4 Section 270A of ITEPA provides for a limited exemption from income tax in respect of qualifying childcare vouchers provided to an employee. Section 318 of ITEPA provides for a full exemption from income tax for employer-provided care, known as a workplace nursery and section 318A provides for a limited exemption from income tax with regard to other care provided by an employer to an employee known as directly contracted childcare. Section 318C of ITEPA defines "qualifying childcare" which, by

virtue of section 318C(2)(d) includes care provided by a person approved by an organisation accredited under the 1999 regulations. The Income Tax (Qualifying Child Care) (No.2) Regulations are made under section 318D(2) of ITEPA and remove the reference to the 1999 regulations in section 318C(2) (qualifying childcare in England). The effect of this amendment is that from 1st October 2007 vouchers in respect of childcare provided by a person approved under the 1999 regulations in England will no longer qualify for the limited exemption from income tax.

4.5 In addition to partially revoking the 1999 regulations (see paragraph 4.2), the Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 revokes the 2005 Scheme. Unlike under the 1999 regulations, the approval body continues to determine applications for approval received before 1st October 2007, and a childcare provider who has been approved under the 2005 Scheme continues to provide qualifying childcare until their period of approval comes to an end.

4.6 The Childcare (Voluntary Registration) Regulations 2007 ("the VOCR") came into force on 6th April 2007. The VOCR provides for a voluntary register maintained by the Chief Inspector for Education, Children's Services and Skills ("the Chief Inspector"). Childcare providers who were previously approved under the 1999 regulations and the 2005 Scheme may apply for registration on this register. Reference to the VOCR has already been inserted into section 318C of ITEPA and regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 to ensure that the same financial entitlements are available to those who use childcare provided by persons on that register.

5. Territorial Extent and Application

The 1999 regulations apply in relation to both England and Wales, and they are revoked only in so far as they apply to England. The 2005 Scheme applied only in relation to England, and the revocation applies to England only.

6. European Convention on Human Rights

6.1 The Working Tax Credit (Entitlement and Maximum Rate) (Amendment No.2) Regulations 2002, the Tax Credit (New Category of Child Care Provider) (Revocation) (England) Regulations 2007 and the Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 are subject to negative resolution procedure and do not amend primary legislation so no statement is required.

6.2 The Income Tax (Qualifying Child Care) (No.2) Regulations 2007 although subject to negative resolution procedure, amend primary legislation and accordingly a statement is required. The Exchequer Secretary to the Treasury, Angela Eagle, has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Qualifying Child Care) (No.2) Regulations 2007 are compatible with the Convention rights."

7. Policy background

7.1 The current system of regulation of childcare is complex and confusing. In England different types of childcare are registered or approved through different schemes, administered by different bodies, each of which applies different standards. The

Government's ten year strategy for childcare, *Choice for parents, the best start for children*, set out a commitment to rationalise and simplify these arrangements. The Government, through the Childcare Act 2006, is reforming the regulation and inspection regime for childcare.

7.2 Until April 2007, childcare for children aged eight and over, and childcare for children of any age that is provided in the child's home could not be registered by the Chief Inspector. The 1999 regulations and the 2005 Scheme were introduced to allow such childcare to become qualifying childcare to enable parents to benefit from the childcare element of working tax credit and employer supported childcare vouchers.

7.3 The introduction of the VOCR in April 2007 enables all types of childcare providers in England, including those providing childcare for children aged eight and over, and childcare in the child's own home, to be registered by the Chief Inspector, if they meet the requirements. Childcare that is registered by the Chief Inspector is considered qualifying childcare for the purpose of parents claiming working tax credit and employer supported childcare vouchers. Therefore the accreditation of quality assurance schemes under the 1999 regulations is no longer needed and accreditation will end from 1 October 2007. If accreditation under the 1999 regulations were allowed to continue it would increase the complexity of the arrangements rather than achieving the aim of a simplified system.

7.4 The Government consulted publicly on the introduction of the new regulatory arrangements in 2005 before introducing the Childcare Bill to Parliament. The Government also consulted on the introduction of the Ofsted Childcare Register from July to September 2006. As part of this consultation views were sought on transitional arrangements to end the accreditation of quality assurance schemes. The arrangements proposed in that consultation were developed in discussion with the organisations running the accredited quality assurance schemes. 112 responses were received, from national childcare organisations, local authorities and childcare providers. The consultation showed broad agreement to the proposals (nearly 70% agree or had no strong opinion). Of those who disagreed with the proposals the main concern was that the arrangements should be widely communicated.

7.5 The proposed changes to the Scheme provided for by the 1999 regulations were discussed with the organisations running the accredited quality assurance schemes prior to consultation and the approach was made clear in the consultation response, published on 5th November 2007. The DCSF wrote to all accredited quality assurance schemes and approved providers in December 2006, outlining how they will be affected and what action they should take. A reminder letter was sent in July 2007. All childcarers approved under the 2005 Scheme have been informed of the changes. DCSF literature and websites have been updated. HMRC's tax credit information has also been updated to communicate the message to parents. A national publicity campaign, aimed at childcare providers and parents, explaining the changes to the regulation of childcare is taking place as these regulations come into force.

8. Impact

8.1 Ending the accreditation of quality assurance schemes will help to simplify the regulation of childcare by making Ofsted the only body that is responsible for the registration of childcare in England. This will provide greater clarity to both childcare

providers and parents. Childcare providers who are affected by the closure are able to apply to be registered on the voluntary part of the Ofsted Childcare Register.

8.2 The Regulatory Impact Assessment for the Childcare (Voluntary Registration) Regulations 2007 explored the impact of these changes. It can be obtained at the OPSI website on the following weblink:

(http://www.opsi.gov.uk/si/em2007/uksiem_20070730_en.pdf).

9. Contact

9.1 Patrick Heisel at the Department for Children, Schools and Families, tel: 0207 273 5716 or e-mail: Patrick.heisel@dcsf.gsi.gov.uk can answer any queries regarding the instrument.