EXPLANATORY MEMORANDUM TO

THE INCOME TAX (QUALIFYING CHILD CARE) (WALES) REGULATIONS 2021

2021 No. 1344

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 "Qualifying childcare" is supported by the government through an income tax and National Insurance contributions (NICs) exemption on Employer Supported Childcare (ESC) schemes. Following updates to the provision of registered or approved childcare in Wales, the ESC legislation is referring to outdated regulations. This instrument provides a small, technical amendment to the legislation underpinning the ESC schemes to ensure that the current position is maintained.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 Wales.

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC 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) (Wales) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The ESC schemes would be chargeable to income tax as a benefit in kind by virtue of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). However, section 270A (Childcare Vouchers) and section 318A (Directly Contracted Childcare) provide for exemptions. One of the conditions for these exemptions to apply is that childcare provided must be "qualifying childcare" under section 318C ITEPA 2003. The regulation and approval of childcare has been devolved to each country within the United Kingdom, with relevant legislation made by each devolved government. The definition of "qualifying childcare" for the tax exemption uses definitions in that devolved legislation.

6.2 Section 318C(3) ITEPA 2003 provides for the definition of qualifying childcare in Wales.

6.3 In order to meet the definition of qualifying childcare in Wales under section 318C(3) ITEPA 2003, childcare providers in Wales needed to be approved under the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007 (the 2007 Scheme). However, the legislative power used to make the 2007 Scheme has been repealed (with savings provisions).

6.4 On 1 April 2021, the Approval of Home Childcare Providers (Wales) Scheme 2021 (the 2021 Scheme) was made by the Welsh Ministers using their powers under section 60 of the Government of Wales Act 2006. The 2021 Scheme provides the new definition of "qualifying childcare" in Wales.

6.5 Applications for approval by childcare providers that were made and determined up to and including 31 March 2021 were made and determined under the 2007 Scheme. An approval under the 2007 Scheme is made for a period of 12 months from the date of the approval. Paragraph 16 of the 2021 Scheme contains savings and transitional provisions, the effect of which is that applications for approval made under the 2007 Scheme in advance of, but not determined by, 1 April 2021 will be determined under the 2021 Scheme. Applications for a new approval or renewal of approval made on or after 1 April 2021 will be determined under the 2021 Scheme.

6.6 By 1 April 2022, all approvals made under the 2007 Scheme will therefore expire and the scheme will lapse.

6.7 The effect of this is that section 318C(3) ITEPA 2003 is currently referring to the 2007 Scheme, which is due to lapse on 1 April 2022. This instrument therefore provides for section 318C(3) ITEPA 2003 to include reference to the 2021 Scheme (in addition to the 2007 Scheme).

6.8 The NICs treatment will automatically follow the tax treatment as a result of the tax legislation being updated.

7. Policy background

What is being done and why?

7.1 The purpose of section 270A and section 318A ITEPA 2003 is to exempt the provision of childcare provided under certain ESC schemes from income tax and NICs. In order to be eligible for the exemption, childcare provided under these ESC schemes must be "qualifying childcare" under section 318C ITEPA 2003.

7.2 Following updates to the legislation underpinning the definition of qualifying childcare in Wales, section 318C ITEPA 2003 is currently referring to regulations which are due to expire. This instrument therefore provides for section 318C(3) ITEPA 2003 to refer to the new 2021 Scheme (as set out at Section 6 above).

7.3 This will ensure that those employees who use childcare through Childcare Vouchers or Directly Contracted Childcare in accordance with the 2021 Scheme will be able to benefit from the income tax and NICs exemption as is intended by the legislation.

7.4 This is a small but necessary technical fix to ensure that the ESC legislation is up to date and the current position is maintained. The 2021 Scheme will not introduce any changes to the existing population of the ESC scheme or the way it can be used.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 There are no plans to consolidate ITEPA 2003.

10. Consultation outcome

10.1 No consultation has been held as this is a minor technical change to maintain the current position.

11. Guidance

11.1 Guidance can be found on the following gov.uk website: https://www.gov.uk/guidance/employer-supported-childcare-480-appendix-11#meaning-of-qualifying-childcare.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as the proposed amendments to the legislation will not introduce any changes to ESC schemes. This is a minor technical amendment to the legislation underpinning ESC schemes and is designed to maintain the current position.

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

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument will be monitored and reviewed as appropriate through communication with affected taxpayer groups.

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

15. Contact

15.1 Nicholl Lynch, policy lead at HMRC. Telephone: 03000 583032 or email: employmentincome.policy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jackie McGeehan, Deputy Director, Income Tax Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.