

**Draft legislation: The Qualifying Care Relief (Specified Social Care Schemes)  
(Amendment) Order 2018  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to comment on these regulations and understand that HM Revenue & Customs (HMRC) have drafted them in this way partly to ensure no fiduciary or representative relationship should exist between the shared lives carer ('carer') and the adult they support ('placed adult'). Nonetheless we have some reservations.
- 1.2 The proposed regulations do not take account of the current ways in which shared lives carers are paid. If the regulations are passed in their current format they could in practice deny qualifying care relief to some carers who are providing shared lives care in accordance with an approved shared lives scheme. The proposed regulations would involve extensive record keeping and reporting for these schemes – and increased work for HMRC – for the relief to be obtained by carers. It would also mean shared lives schemes would incur increased costs while some carers may incur unexpected tax bills.
- 1.3 We recommend that the regulations be amended to state explicitly that payments, other than payments directly for care, made in accordance with authorised shared lives schemes are recognised as qualifying care receipts, regardless of the actual payer. This would cover payments for food, utilities and accommodation, for example, that are all part of caring for the placed adult and should be included within qualifying care relief. Similar issues may arise for foster carers who participate in 'staying put' arrangements.
- 1.4 In order to minimise work for both carers and HMRC, we recommend that payments already made to carers in accordance with authorised shared lives and staying put schemes should

be recognised as qualifying care receipts. Carers have no control over which elements of the total payment they are due to receive are paid to them from the scheme provider and which elements are paid to them direct by the placed adult. It is the scheme that determines this.

- 1.5 The purpose of new paragraph 4A of the Qualifying Care Relief (Specified Social Care Schemes) Order 2011, inserted by draft regulation 2(3), is consequently difficult to understand. We believe it could be redrafted to make it more clear that the intention is to deny qualifying care relief where payments are made to carers other than for qualifying care (for example, for chiropody). The Explanatory Note is equally unclear.

## **2 About Us**

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 We welcome the opportunity to comment on these draft regulations, particularly because we are aware that the way in which shared lives schemes operate has changed significantly since the legislation was first introduced. Indeed we had requested that legislation be amended to reflect current practices.
- 3.2 There are approximately 60,000 shared lives carers in the UK, who are looking after adults in the carer's own home and as part of the carer's family. This is a difficult job, but it provides the placed adult with a stable home and is significantly less expensive for the state than having that adult in state-run residential accommodation.
- 3.3 Shared lives carers are paid a weekly amount for caring for their placed adult, that weekly amount being determined by the regulated scheme of which they are a member. Historically that sum was paid by the local authority or health board, but due to a change in regulation

of such schemes, payments may now be made to the carers from a variety of sources, while the overall amount paid to them is determined by the scheme.

3.4 A special tax regime operates for shared lives carers (and foster carers), who are normally treated as self-employed. Qualifying care relief enables a carer to calculate an amount (the 'maximum amount') based on the use of the carer's home and the number of weeks that they support an adult (or child or young person in the case of foster carers). Provided that the total receipts from provision of that qualifying care are less than the maximum amount, the carer may complete their tax return showing nil profit from the caring and is required to keep no records of household expenses, and so on. Where care receipts exceed that maximum, carers may choose to report a 'profit' of the excess of care receipts over the maximum or to report profits on the normal basis. Qualifying care relief thus simplifies significantly the record-keeping and reporting requirements for carers.

3.5 ***Tax issues arising from changes in ways shared lives schemes are administered***

3.5.1 Since qualifying care relief was introduced, the provision of care in the community has seen many changes. One of these is that instead of regulating carers, local authorities regulate shared lives schemes which, in turn, administer the payments to carers.

3.5.2 Further, there have been changes in the way payments for such shared lives care are made. As noted above, payments used to be made to the carer by a local authority or health board. What happens now is that payments may also be made by the shared lives scheme provider and by the adult placed in shared lives care (the 'placed adult') for some of their care. This change has come about due to changes in the way that local authority and health and social care are funded. For example, payments of housing benefit or for Personal Independence Payments, among other payments, are made direct to the placed adult.

3.5.3 Individual schemes deal with the sums paid to the placed adult in different ways. Some require the placed adult to pay an amount direct to the scheme provider and the scheme then redirects the payment to the carer. Many schemes, though, allow (or even encourage) payments to be made by the placed adult direct to the carer, although in all cases the amount is monitored to ensure that the overall sum being paid to the carer is in accordance with the scheme's determination.

3.5.4 Strictly this could mean that some payments being received by carers at present are not qualifying care receipts in terms of the tax legislation – because they are not being received from a local authority or health board. Carers, though, are receiving the same amount of income and performing the same work, regardless of how the funds are paid to them.

3.5.5 Foster carers who participate in 'staying put' arrangements may similarly find that part of their payment comes directly from the placed adult.

#### **4 Points arising from the draft regulations**

##### **4.1 Draft Regulation 1**

4.1.1 We note the regulation is intended to apply from 2017/18 onwards. While we welcome the change we do think there needs to be some interim measure to reduce any administrative burden on carers. (See 4.2.3 below)

##### **4.2 Draft regulation 2(2)**

4.2.1 Regulation 2 (2)(b) is designed to enable payments made from relevant social care schemes to be qualifying care receipts. As noted above, we do not think this addresses properly how payments are made in practice at the moment: payments are made *in accordance with* the scheme but not necessarily *by* the scheme.

4.2.2 From discussions with HMRC during this consultation period, we understand that these regulations are designed to ensure that the 'care' part of any payment made to carers **must** be paid by the scheme provider, local authority or health board. On the other hand, there seemed to be an acceptance that payment of the other elements that make up the total approved payment to the carer did not have to be paid directly by the scheme. Those other elements would be for accommodation (often paid from housing benefit) and for food and utilities (often paid from other state benefits). In order to provide certainty to the carers, this interpretation of how other payments may be received should be included in the regulations and Explanatory Note.

4.2.3 While it is certainly possible that the care payments could be routed in this way via scheme providers in the future, inevitably this will be time-consuming and potentially costly for the schemes who may have to administer changes to direct debits and reconcile significant numbers of receipts into their bank accounts. We are not aware if HMRC have approached any schemes to see how long it may take to make these changes but we suggest that it may take until 31 March/5 April 2019.

4.2.4 Because of this, we recommend that carers be given written assurance that as long as their receipts arise in accordance with a qualifying scheme, they may continue to use qualifying care relief in the meantime.

##### **4.3 Draft regulation 2(3)**

4.3.1 We understand that this regulation is designed to ensure that any other payments made to carers, for example in relation to chiropody services, would not be covered by qualifying care relief. We agree with this purpose, but both the draft regulation and Explanatory Note are unclear. This requires much clearer drafting and increased explanation.