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STATUTORY INSTRUMENTS

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**2005 No. 93**

**TAX CREDITS, ENGLAND**

**The Tax Credits (Approval of Child  
Care Providers) Scheme 2005**

*Made* - - - - *24th January 2005*  
*Laid before Parliament* *1st February 2005*  
*Coming into force* - - *6th April 2005*

The Secretary of State for Education and Skills, being the appropriate national authority under section 12(6) of the Tax Credits Act 2002<sup>(1)</sup> and in exercise of the powers conferred on the Secretary of State by sections 12(5), (7) and (8) and 65(9) of that Act, and after consultation with the Council of Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992<sup>(2)</sup>, hereby makes the following Scheme:

**Citation, commencement and application**

1.—(1) This Scheme shall be known as the Tax Credits (Approval of Child Care Providers) Scheme 2005 and shall come into force on 6<sup>th</sup> April 2005.

(2) This Scheme applies in relation to England.

**Definitions**

2. In this Scheme—

“the 1989 Act” means the Children Act 1989<sup>(3)</sup>;

“approval body” means the body referred to in article 3;

“approval criteria” has the meaning given to it in article 7;

“child” has the meaning attributed to it by the Child Tax Credit Regulations 2002<sup>(4)</sup>;

“domestic premises” means any premises which are wholly or mainly used as a private dwelling and “premises” includes any area and any vehicle;

“parent” includes a person who—

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(1) 2002 c. 21.

(2) 1992 c. 53.

(3) 1989 c. 41.

(4) S.I. 2002/2007.

- (a) has parental responsibility for a child;
- (b) is a local authority foster parent in relation to a child;
- (c) is a foster parent with whom a child has been placed by voluntary organisation; or
- (d) fosters a child privately;

“parental responsibility” and “fosters a child privately” have the meanings attributed to those respective expressions by sections 3 and 66 of the 1989 Act;

“qualifying child care” has the meaning ascribed to it in article 5;

“relative” in relation to a child means a grand-parent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or a step-parent;

“relevant first-aid certificate” means a certificate in respect of a course of first-aid training—

- (a) which is suitable to the care of babies and children;
- (b) which includes training in the following areas: dealing with emergencies; resuscitation; shock; choking; anaphylactic shock; and
- (c) which has been undertaken by the applicant not more than three years before the date upon which the application for approval is made;

“the Tribunal” means the Tribunal established by section 9 of the Protection of Children Act 1999<sup>(5)</sup>;

“the Tribunal Regulations” means the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002<sup>(6)</sup>.

### **Specified body**

**3.** The body specified for the purpose of giving approvals under this Scheme is Nestor Primecare Services Limited.

### **Requirements of the Scheme**

**4.** For the purposes of regulations made under section 12 of the Tax Credits Act 2002<sup>(7)</sup>, a person shall be a child care provider approved in accordance with this Scheme only—

- (a) if he is for the time being approved by the approval body; and
- (b) in respect of the provision by him of qualifying child care.

### **Qualifying Child Care**

**5.—(1)** Qualifying child care means care for a child provided by an individual on domestic premises for reward but does not include care referred to in paragraph (2).

(2) Qualifying child care does not include—

- (a) childminding which is subject to registration pursuant to Part 10A of the 1989 Act<sup>(8)</sup>;
- (b) child care provided wholly or mainly in the child’s own home in respect of a child to whom the provider is a parent or relative; or

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<sup>(5)</sup> 1999 c. 14.

<sup>(6)</sup> SI 2002/816; as amended by SI 2003/1060 and SI 2005/2075.

<sup>(7)</sup> 2002 c. 21; the current regulations are the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I.2002/2005).

<sup>(8)</sup> Part 10A was inserted by section 79 of the Care Standards Act 2000 (c. 14).

- (c) child care provided wholly or mainly in the home of a relative of the child where such care is usually provided solely in respect of one or more child to whom the provider is a parent or relative.

### **Approved person**

6.—(1) A person shall be given approval as a child care provider under this Scheme if the approval body is satisfied that the approval criteria are met in relation to that person.

(2) A person who has been given approval under paragraph (1) shall cease to be so approved if that approval is withdrawn by the approval body.

(3) The approval body may withdraw an approval if satisfied that the approval criteria are no longer met in relation to that person.

### **Approval criteria**

7. In relation to an application for approval as a child care provider the approval criteria are—

- (a) that the applicant is 18 years of age or over;
- (b) that the applicant—
  - (i) has obtained one of the qualifications from time to time specified in a list maintained by the Department for Education and Skills<sup>(9)</sup> for the purpose of this article; or
  - (ii) has attended a basic course of training in the care of children being one specified in a list maintained by the Department for Education and Skills<sup>(10)</sup> for the purpose of this article;
- (c) that the applicant has obtained a relevant first-aid certificate; and
- (d) that the applicant is not considered unsuitable to work with or have unsupervised access to children.

### **Approval system**

8.—(1) The approval body shall operate a system for the determination of applications for approval made to it under this Scheme and shall make adequate arrangements to publicise the details of that system.

(2) Without prejudice to the generality of paragraph (1), the approval system referred to in that paragraph shall in particular—

- (a) provide for a procedure by which an applicant may apply for approval;
- (b) set out requirements relating to the provision by an applicant of documentary or other evidence necessary to demonstrate that the approval criteria are met;
- (c) provide for a procedure whereby approvals may be withdrawn;
- (d) provide for the applicant to be given notice in writing in respect of a determination to grant, refuse or withdraw an approval;
- (e) provide for a procedure whereby it may be ascertained whether an individual is for the time being approved under the Scheme; and
- (f) provide for the keeping of appropriate records relating to applications for approvals and to the grant, refusal or withdrawal of such approvals.

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<sup>(9)</sup> The list is accessible on the Department for Education and Skills Website: [www.dfes.gov.uk/childrenswfqualifications](http://www.dfes.gov.uk/childrenswfqualifications).

<sup>(10)</sup> Ibid.

(3) The approval body shall maintain a record of those persons to whom an approval is granted for the time being under this Scheme.

(4) The records referred to in paragraphs (2) and (3) may be kept by means of a computer.

#### **Provision of information by approval body**

9. The approval body shall supply to the Commissioners of Inland Revenue such information as they may require for the discharge of any of their functions relating to working tax credit and which is information relating to the approval, or the refusal or withdrawal of approval, of persons under this Scheme.

#### **Period of approval**

10.—(1) An approval given under this Scheme shall state the period of its validity which shall not exceed a period of 12 months.

(2) Nothing in this article shall prejudice the application of article 6(2).

#### **Appeals**

11.—(1) Where the approval body refuses an application for the grant of an approval or withdraws an approval previously granted, an appeal shall lie to the Tribunal against that decision.

(2) The provisions of the Tribunal Regulations shall apply to an appeal under paragraph (1) as they apply to an appeal under section 79M of the 1989 Act and as if those provisions were set out in this Scheme, but with the modifications referred to in paragraph (3).

(3) Schedule 2 to the Tribunal Regulations shall apply as if—

- (a) any reference to an appeal under the 1989 Act were a reference to an appeal under article 11(1) of this Scheme;
- (b) any reference to any registration were a reference to an approval given under this Scheme;
- (c) any reference to the cancellation of registration were a reference to the withdrawal of an approval under this Scheme;
- (d) any reference to the registration body or the respondent were a reference to the approval body; and
- (e) paragraph 3(3)(c) of that Schedule were modified as specified in paragraph (4) of this article and any reference to the said paragraph 3 were a reference to that paragraph as so modified.

(4) The said paragraph 3(3)(c) shall apply as if—

- (a) the decision referred to in sub-paragraph (ii) of that paragraph were to the decision to refuse to grant or to withdraw an approval under this Scheme; and
- (b) sub-paragraph (iii) of that paragraph did not apply.

(5) On an appeal, the Tribunal may—

- (a) confirm the refusal to grant the approval or the withdrawal of the approval;
- (b) direct that the said refusal or withdrawal shall not have, or shall cease to have, effect; or
- (c) direct the approval body to reconsider any decision which is the subject of the appeal.

#### **Fees**

12. The approval body may charge any person seeking approval under this Scheme such reasonable fee as it shall, subject to the approval of the Secretary of State, determine.

### **Revocation and saving**

**13.**—(1) Subject to paragraph (2), the Tax Credit (Approval of Home Child Care Providers) Scheme 2003(**11**) (hereinafter referred to as “the 2003 Scheme”) is hereby revoked.

(2) The provisions of the 2003 Scheme shall continue to have effect to the extent necessary to give full effect to paragraph (3).

(3) Any approval granted to any child care provider under the 2003 Scheme and which is in force on 6<sup>th</sup> April 2005 shall continue to have effect in respect of that provider under that Scheme until whichever is the earliest of—

- (a) the date on which the approval is withdrawn or suspended in accordance with the 2003 Scheme;
- (b) the date on which the child care provider concerned is given an approval by the approval body pursuant to article 6 of this Scheme; or
- (c) 31<sup>st</sup> December 2005.

24th January 2005

*Margaret Hodge*  
Minister of State  
Department for Education and Skills

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Scheme)*

This Scheme provides for the approval of child care providers for the purposes of section 12(5) of the Tax Credits Act 2002 (“the Act”). The Secretary of State is the “appropriate national authority” in relation to care provided in England. Qualifying child care (as defined) provided by a person approved in accordance with this Scheme constitutes care provided by a person of a prescribed description for the purposes of section 12(4) of the Act. Regulations made under section 12(1) of the Act prescribe the circumstances in which entitlement to working tax credit in respect of care provided by a person approved in accordance with this Scheme may arise. (See the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I.2002/2005)).

The approval body named in this Scheme is specified by the Secretary of State under section 12(7) of the Act (*article 3*). Applications for approval are determined by the approval body in accordance with criteria set out in this Scheme (*article 7*).

The Scheme further provides:

- (a) for the approval body to operate a system for the determination of applications for approval (*article 8*);
- (b) for the approval body to provide information to the Commissioners of Inland Revenue in order to enable them to discharge their functions relating to working tax credit (*article 9*);
- (c) for the period of validity of an approval (*article 10*);
- (d) for the right to appeal against the refusal or withdrawal of approval (*article 11*);
- (e) for the charging of fees by the approval body (*article 12*).

The Tax Credits (Approval of Home Child Care Providers) Scheme 2003 is revoked with savings for current approvals granted under that instrument (*article 13*).

This Scheme applies only in relation to England.