

2002 No. 1417

TAXES

**The Tax Credit (New Category of Child Care Provider)
Regulations 2002**

<i>Made - - - - -</i>	<i>22nd May 2002</i>
<i>Laid before Parliament</i>	<i>29th May 2002</i>
<i>Coming into force - -</i>	<i>20th June 2002</i>

The Secretary of State for Defence, in exercise of the powers conferred by sections 15(1), (2) and (4) of the Tax Credits Act 1999(a), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Tax Credit (New Category of Child Care Provider) Regulations 2002 and shall come into force on 20th June 2002.

Interpretation

2. In these Regulations—

- (a) where the doing of anything is required to be in writing and authenticated by a signature, the use of electronic communication is not permitted; and
- (b) “accredited” in relation to an organisation means accredited by the Secretary of State in accordance with the criteria set out in these Regulations;

“child care provider” means a person who looks after one or more children under the age of 15 (under the age of 16 if the child is disabled) outside the United Kingdom for reward;

“disabled” in relation to a child under the age of 16 means a child—

- (i) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient within the meaning of regulation 10 of the Disability Working Allowance (General) Regulations 1991(b);
- (ii) who is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948(c) (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council; or
- (iii) who ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim;

“electronic communication” means electronic communication as defined in section 15 of the Electronic Communications Act 2000(d);

(a) 1999 c.10.
(b) S.I.1991/2887.
(c) 1948 c. 29.
(d) 2000 c. 7.

“scheme” means the scheme made by these Regulations for establishing a new category of persons whose charges for providing child care are to be taken into account for the purposes set out in section 15(1) of the Tax Credits Act 1999;

“system” means the system operated by an accredited organisation for approving child care providers and assessing the quality of child care provided by them.

Requirements of the scheme

3. A person shall only fall within the category of persons established by the scheme—
 - (a) if he is approved by an accredited organisation; and
 - (b) in relation to the provision by him of child care outside the United Kingdom.

Criteria for accreditation

4. The Secretary of State may accredit an organisation for the purposes of the scheme if in his opinion it satisfies the following criteria—
 - (a) it operates a system that includes the matters set out in Schedule 1 to these Regulations;
 - (b) it has the ability to ensure that the quality of child care provided by persons which it approves meets the criteria referred to in regulation 12 of and set out in Schedule 3 to these Regulations;
 - (c) it operates an equal opportunities policy for its employees in relation to the services it provides, to the system and to the training of assessors; and
 - (d) if it proposes to charge child care providers fees for its services, those fees are reasonable in the opinion of the Secretary of State.

Application for accreditation

5.—(1) An organisation seeking accreditation shall make an application to the Secretary of State which shall include the information specified in Part I of Schedule 2 to these Regulations.

(2) An application for accreditation shall be in writing, dated and authenticated by the signature of a duly authorised officer of the organisation.

Grant of accreditation

6.—(1) Subject to the following paragraphs of this regulation, where an organisation applies to the Secretary of State for accreditation, he may—

- (a) reject the application; or
- (b) grant the accreditation on such conditions, if any, as he thinks necessary or expedient.

(2) Before making a decision under paragraph (1), the Secretary of State may require further evidence from the organisation and may consult any person as he thinks fit.

(3) Where the Secretary of State is minded to reject an application under paragraph (1)(a) he shall notify the organisation of this in writing, giving his reasons and inviting the organisation to make representations in support of its application within 28 days starting with the date of receipt of the notification.

(4) The organisation may, within 28 days starting with the date of receipt of a notification under paragraph (3), make written representations to the Secretary of State in support of its application.

(5) The Secretary of State shall consider any representations made by the organisation in accordance with paragraph (4) before making his decision under paragraph (1).

(6) Where the Secretary of State is minded to grant accreditation on conditions under paragraph 1(b), he shall notify the organisation of this in writing, setting out the conditions he is minded to impose.

(7) The organisation shall, within 28 days starting with the date of receipt of a notification under paragraph (6)—

- (a) advise the Secretary of State in writing that it accepts the conditions proposed; or

(b) make written representations in support of its objections to the conditions proposed.

(8) The Secretary of State shall consider any representations made by the organisation in accordance with paragraph (7)(b) before making his decision under paragraph (1).

(9) When the Secretary of State has made his decision under paragraph (1) he shall notify the organisation concerned of his decision in writing. Where the decision is to grant the accreditation on conditions the notification shall specify those conditions.

(10) Where the Secretary of State's decision is to accredit an organisation, a copy of the notice referred to in paragraph (9) shall be sent to the Inland Revenue.

(11) Accreditation shall be for a period of three years and shall be conditional upon the organisation continuing to meet the criteria for accreditation set out in regulation 4 above and any conditions to which its accreditation is subject under paragraph 1(b) of this regulation.

Renewal of accreditation

7.—(1) If an accredited organisation wishes to renew its accreditation it shall, during the period of two months prior to the expiry of its accreditation, make an application to the Secretary of State to renew its accreditation.

(2) An application by an organisation to renew its accreditation shall include the information specified in Parts I and II of Schedule 2 to these Regulations.

(3) An application by an organisation to renew its accreditation shall be in writing, dated and authenticated by the signature of a duly authorised officer of the organisation.

(4) Subject to the following paragraphs of this regulation, where an organisation applies to the Secretary of State for renewal of its accreditation, he may—

- (a) reject the application; or
- (b) renew the accreditation on such conditions, if any, as he thinks necessary or expedient.

(5) The Secretary of State may vary any conditions imposed on a previous accreditation.

(6) The procedures set out in regulation 6(2) to (10) above shall apply to an application for renewal of accreditation as they apply to an application for the grant of accreditation, but for this purpose references in regulation 6 to a decision under paragraph (1) of that regulation shall be taken to be references to a decision under paragraph (4) of this regulation.

(7) Any renewed accreditation shall be for a period of three years from the expiry of the earlier accreditation and shall be conditional upon the organisation continuing to meet the criteria for accreditation set out in regulation 4 above and any conditions to which its accreditation is subject under paragraph 4(b) of this regulation.

(8) Where an organisation has made an application for renewal of its accreditation its accreditation shall remain in force until the Secretary of State has made a decision under paragraph 4 of this regulation, notwithstanding that apart from this paragraph it would expire earlier.

Withdrawal of accreditation or variation of conditions of accreditation

8.—(1) Subject to the following paragraphs of this regulation, the Secretary of State may withdraw an organisation's accreditation or vary the conditions of its accreditation if he is satisfied that—

- (a) the organisation no longer meets the criteria for accreditation set out in regulation 4 above;
- (b) the organisation has breached one or more of the conditions of its accreditation; or
- (c) the organisation has acted improperly.

(2) The Secretary of State shall notify the organisation in writing if he is minded to withdraw its accreditation or vary the conditions of its accreditation, giving his reasons for this and inviting the organisation to make representations in response to this notice within 28 days starting with the date of receipt of the notification.

(3) The organisation may, within 28 days starting with the date of receipt of a notification under paragraph (2), make written representations to the Secretary of State in response to the notice.

(4) The Secretary of State shall consider any representations made by the organisation in accordance with paragraph (3) before making a decision whether or not to withdraw its accreditation or vary the conditions of its accreditation.

(5) When the Secretary of State has made a decision whether or not to withdraw an organisation's accreditation or vary the conditions of its accreditation he shall notify the organisation of his decision in writing.

(6) Where the Secretary of State's decision is to withdraw an organisation's accreditation or vary the conditions of its accreditation, such decision shall take effect after 28 days starting with the date on which the organisation is notified of the decision.

(7) The Secretary of State may by written notice suspend an organisation's accreditation for the period during which he is considering withdrawing its accreditation or varying the conditions of its accreditation if he considers this to be necessary. The suspension shall take effect from the date that the organisation receives this notification.

(8) During the period in which an organisation's accreditation is suspended under paragraph (7) the organisation shall not approve any child care providers, but the suspension shall not affect the validity of approvals already given.

(9) Where the Secretary of State decides to withdraw an organisation's accreditation or vary the conditions of its accreditation a copy of the notice referred to in paragraph 5 shall be sent to the Inland Revenue.

Requirements during the period of accreditation

9. During the period for which an organisation is accredited that organisation shall—
- (a) provide to the Inland Revenue such information as it may request about child care providers that the organisation has approved under its system for the purpose of checking eligibility for child care tax credit;
 - (b) provide to the Secretary of State such information as he may request about child care providers that the organisation has approved under its system for the purpose of ensuring the effective operation of the system;
 - (c) maintain adequate records about the approval process it operates, including evidence supplied by child care providers seeking approval under the system, which shall be produced to the Secretary of State on his request;
 - (d) allow the Secretary of State or his nominee to attend meetings of the panel awarding approval to child care providers, and to accompany assessors on visits to child care providers during the process of assessment and on any subsequent checks once the provider has been approved under the system.

Requirements during the period of approval

10. During the period for which a child care provider is approved by an accredited organisation he shall allow quality assessors and representatives of the accredited organisation, the Secretary of State and the Inland Revenue access at any reasonable time to his premises and records.

Consequences for child care providers approved by an organisation whose accreditation is withdrawn or expires

11.—(1) When an organisation's accreditation is withdrawn or expires without being renewed the Secretary of State may, with effect from the date of that withdrawal or expiry, replace that organisation with an alternative accredited organisation by notice in writing to—

- (a) the child care providers approved by the organisation whose accreditation is withdrawn or has expired; and
- (b) the alternative accredited organisation.

(2) A child care provider who has been approved by an organisation whose accreditation has been withdrawn or has expired without being renewed shall retain his approval for the remainder of the period of approval, unless the Secretary of State is of the opinion that such approval was improperly granted.

(3) Where the Secretary of State is of such an opinion he shall serve a notice in writing on the child care provider terminating the approval, and the termination shall take effect from the date that the child care provider receives the notice.

Criteria for approval of child care provider

12. An accredited organisation shall approve a child care provider who meets the criteria set out in its system, which criteria shall include those matters set out in Schedule 3 to these Regulations.

Grant to accredited organisation

13. The Secretary of State may make payment by way of grant or otherwise to an accredited organisation in respect of costs incurred by the organisation in carrying out its functions.

22nd May 2002

Geoffrey Hoon
Secretary of State for Defence

THE SYSTEM

Matters that shall be included in the system

The system shall—

1. establish an awarding panel, to include at least one individual with expertise in out of school child care provision, to approve child care providers;
2. set out the criteria, including those matters set out in Schedule 3, to be met by child care providers in order for them to be approved;
3. set out the procedures for applying for approval;
4. set out the documentary evidence a child care provider must produce to demonstrate that the criteria he is required to meet are met;
5. provide for a quality assessor to assess the extent to which the criteria are met by the child care provider including by visiting the premises and interviewing staff, parents and children as he sees fit;
6. ensure that any quality assessor has been properly trained in the requirements of the system;
7. ensure that a quality assessor does not work and has not worked in any way with any child care provider he assesses (other than in assessing the quality of child care provided) and has not entered into any financial arrangement with the child care provider being assessed, other than any payment to cover the costs of the assessment;
8. provide for the awarding panel to approve or reject an application for approval after considering the evidence provided by the child care provider applying for approval, the report of the quality assessor and such other information as the panel thinks fit;
9. provide for a method of appeal against any refusal to approve a child care provider, involving independent arbitration;
10. fix a period of time (not exceeding two years) for which any approval will last;
11. provide for written confirmation to be given to the child care provider of any approval granted, the period for which approval lasts and the reference number allocated to that child care provider;
12. provide for a complaints procedure under which all complaints will be investigated and, if appropriate, approval of a child care provider will be withdrawn;
13. include a requirement that any complaints about approved child care providers are to be referred to the accredited organisation.

SCHEDULE 2

THE APPLICATION

PART I

APPLICATION FOR ACCREDITATION

Information to be included in an application for accreditation

1. Background information about the organisation with evidence of its status and commitment to equality of opportunity.
2. A description of the organisation's system.
3. Details of the training of quality assessors.
4. Membership of the awarding panel.
5. Details of any charges to be levied on child care providers.

PART II

RENEWAL OF ACCREDITATION

Information to be included in an application for renewal of accreditation

1. Details of all child care providers who have been approved by the organisation during the previous period of its accreditation.
2. Details of any appeals against a refusal to grant approval of a child care provider.
3. Details of any complaints received about child care providers who the organisation has approved.
4. Identification of any changes proposed to the organisation's system.

SCHEDULE 3

Regulation 12

CRITERIA FOR APPROVAL OF CHILD CARE PROVIDERS

The child care provider shall—

1. ensure the health, safety and welfare of all children cared for;
2. comply with all applicable health and safety legislation;
3. employ sufficient staff who are adequately trained and suitable to work with children;
4. offer a planned programme of supervised activities that reflect the developmental needs of the children being cared for;
5. operate an equal opportunities policy for parents, children and staff;
6. agree to allow quality assessors and representatives of the accredited organisation, the Secretary of State and the Inland Revenue access at any reasonable time to the child care provider's premises and records.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a scheme for establishing a new category of persons whose charges for providing child care outside the United Kingdom are to be taken into account for the purposes of determining working families' tax credit or disabled person's tax credit. The persons whose charges can be taken into account for these purposes must be approved by an organisation that has been accredited by the Secretary of State.

The scheme establishes—

- (a) the criteria to be met by an organisation seeking accreditation to approve child care providers (regulation 4);
- (b) the matters to be included in the system operated by an accredited organisation for approving child care providers and assessing the quality of child care they provide (regulation 4(a) and Schedule 1);
- (c) the information to be provided by an organisation making or renewing an application for accreditation (regulations 5 and 7 and Schedule 2);
- (d) the procedure for granting and refusing accreditation (regulation 6);
- (e) the procedure for renewing accreditation (regulation 7);
- (f) the procedure for withdrawing accreditation or varying the conditions of accreditation (regulation 8);
- (g) the requirements on an accredited organisation during the period of accreditation (regulation 9);
- (h) the requirements on an approved child care provider during the period of his approval to give access to the Secretary of State and the Inland Revenue (regulation 10);
- (i) the consequences for child care providers approved by an organisation whose accreditation is withdrawn or expires (regulation 11);
- (j) the criteria for approval of a child care provider (regulation 12 and Schedule 3);
- (k) the ability for the Secretary of State to make payments to accredited organisations (regulation 13).

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