

**2003 No.463**

**TAX CREDITS**

**The Tax Credits (Approval of Home Child Care Providers)  
Scheme 2003**

*Made* - - - - - *25th February 2003*

*Laid before Parliament* *4<sup>th</sup> March 2003*

*Coming into force –*  
*All articles (except for articles 17 to 20)* *25<sup>th</sup> March 2003*  
*Articles 17 to 20* *1<sup>st</sup> April 2003*

The Secretary of State for Education and Skills, being the appropriate national authority under section 12(6) of the Tax Credits Act 2002(a) 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(b), hereby makes the following Scheme:

**Citation, commencement and application**

1.—(1) This Scheme shall be known as the Tax Credits (Approval of Home Child Care Providers) Scheme 2003.

(2) Articles 1 to 16, 21 and 22 shall come into force on 25<sup>th</sup> March 2003; articles 17 to 20 shall come into force on 1<sup>st</sup> April 2003.

(3) This Scheme applies in relation to England.

**Definitions**

2. In this Scheme—

“the 1989 Act” means the Children Act 1989(c);

“approval criteria” has the meaning given to it in article 8;

“the Chief Inspector” means Her Majesty’s Chief Inspector of Schools in England(d);

“child” has the meaning attributed to it by the Child Tax Credit Regulations 2002(e);

“parent” includes a person who—

(a) has parental responsibility for a child;

(b) is a local authority foster parent in relation to a child;

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(a) 2002 c.21.

(b) 1992 c.53.

(c) 1989 c. 41.

(d) Her Majesty’s Chief Inspector is appointed under section 1 of the School Inspections Act 1996 (c.57).

(e) S.I. 2002/2007.

- (c) is a foster parent with whom a child has been placed by a voluntary organisation; and
  - (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” means care provided—
- (a) for reward; and
  - (b) in respect of a child other than a child to whom the provider is a parent or relative;
- “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 step-parent;
- “the Tribunal” means the Tribunal established by section 9 of the Protection of Children Act 1999(a);
- “the Tribunal Regulations” means the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(b);
- “the Suspension Regulations” means the Child Minding and Day Care (Suspension of Registration) (England) Regulations 2003(c).

### **Specified person**

3. The person specified for the purpose of giving approvals under this Scheme is the Chief Inspector.

### **Requirements of the Scheme**

4. For the purposes of regulation 14(2) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(d), a person shall only be a child care provider approved in accordance with this Scheme—
- (a) if he is for the time being approved by the Chief Inspector; and
  - (b) in respect of the provision by him of qualifying child care.

### **Approved person**

5.—(1) The Chief Inspector may give an approval under this Scheme only in respect of a person who at the time of making the application is registered for child minding pursuant to section 79F(1) of the 1989 Act(e).

(2) Subject to the requirement of paragraph (1), a person shall be given approval as a child carer under this Scheme if the Chief Inspector is satisfied that the approval criteria are met in relation to that person.

(3) A person who has been given approval under paragraph (2) shall cease to be so approved if that approval is withdrawn by the Chief Inspector or by virtue of an order under article 21.

(4) The Chief Inspector may withdraw an approval if he is satisfied that the approval criteria, or any of the conditions attached by virtue of article 10 to which the giving of the approval is subject, are no longer met in relation to that person.

### **Approval system**

6. The Chief Inspector shall operate a system for—
- (a) the determination of applications for approval made to him under this Scheme; and

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(a) 1999 c.14.

(b) S.I. 2002/816.

(c) S.I. 2003/332.

(d) S.I.2002/2005.

(e) Part XA (sections 79A to 79X) of the 1989 Act was inserted by the Care Standards Act 2000 (c.14), section 79(1).

- (b) the assessment of the extent to which the approval criteria continue to be met by a person so approved,

and shall make adequate arrangements to publicise the details of that system.

7. Without prejudice to the generality of article 6, the approval system referred to in that article shall in particular—

- (a) provide for a procedure by which applicants 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) arrange for child care provided by a person approved under this Scheme to be inspected or otherwise assessed at suitable intervals;

and may—

- (e) provide that reports of inspections or assessments be published in such form and manner as the Chief Inspector may determine;
- (f) provide for such inspections or assessments to be carried out by persons on behalf of the Chief Inspector.

### **Approval Criteria**

8.—(1) The approval criteria shall be established by a Code of Practice issued by the Secretary of State for the purposes of this Scheme, which criteria shall address the matters referred to in the Schedule.

9. In determining whether in respect of any person approved for the purposes of this Scheme it is appropriate for any step referred to in articles 11, 17 or 21 to be taken, the Chief Inspector shall take into account the compliance by that person with the provisions of the Code of Practice.

### **Conditions**

10. The giving of an approval under this Scheme may be made subject to any condition that the Chief Inspector considers appropriate and necessary having regard to the approval criteria, and the Chief Inspector may vary or remove any such condition, or may impose any such new condition.

### **Notice of intention to take steps**

11. Where the Chief Inspector proposes—

- (a) to refuse an application for an approval;
- (b) to withdraw an approval previously granted;
- (c) to vary any condition to which an approval is subject or to impose any new condition; or
- (d) to refuse to grant an application for the removal or variation of any condition to which an approval is subject,

the provisions of section 79L of the 1989 Act (Notice of intention to take steps) shall apply to the taking of such step as they apply to the taking of a step referred to in the said section 79L and as if those provisions were set out in this Scheme, but with the modifications referred to in article 12.

12. Section 79L of the 1989 Act shall apply as if any reference in that section to—

- (a) the registration of any person were a reference to an approval of any person given under this Scheme;
- (b) the registration authority were a reference to the Chief Inspector;
- (c) an applicant were a reference to an applicant for approval under this Scheme;

- (d) a registered person were a reference to a person approved or seeking approval under this Scheme; and
- (e) an appeal under section 79M (Appeals) of the 1989 Act were a reference to an appeal under article 14 of this Scheme.

### **List of home child care providers**

**13.** The Chief Inspector shall keep a list of child care providers for the time being approved under this Scheme.

### **Appeals**

**14.** An appeal against the taking of any step referred to in article 11 or against an order under article 21 shall lie to the Tribunal.

**15.—(1)** The provisions of the Tribunal Regulations shall apply to an appeal under article 14 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 (2).

(2) Schedule 2 of the Tribunal Regulations shall apply as if any reference to—

- (a) section 79L or 79M of the 1989 Act were a reference to article 11 or 14 respectively of this Scheme;
- (b) an order under section 79K (Protection of children in an emergency) of the 1989 Act were a reference to an order under article 21 of this Scheme;
- (c) any registration were a reference to an approval given under this Scheme;
- (d) the registration body and the respondent were a reference to the Chief Inspector.

**16.** On an appeal, the Tribunal may—

- (a) confirm the taking of the step or the making of the order or direct that it shall not have, or shall cease to have, effect; and
- (b) impose, vary or cancel any condition to which the approval was subject.

### **Suspension of approval**

**17.—(1)** The Chief Inspector may suspend the approval of any person acting as a child care provider under this Scheme if the Chief Inspector has reasonable cause to believe that the continued provision of that care by that person exposes or may expose one or more of the children to whom it is or may be provided to the risk of harm and the purpose of the suspension is for one or more of the purposes set out in paragraph (2).

(2) The purposes of suspension are—

- (a) to allow time for the circumstances giving rise to the Chief Inspector's belief to be investigated;
- (b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

**18.** An appeal against the suspension of approval pursuant to article 17 shall lie to the Tribunal.

**19.—(1)** The provisions of regulations 4 to 8 of the Suspension Regulations shall apply to a suspension under article 17 as they apply to a suspension under regulation 3 of the Suspension Regulations and as if those provisions were set out in this Scheme, but with the modifications referred to in paragraph (2).

(2) The Suspension Regulations shall apply as if any reference to—

- (a) the registration of any person were to the approval of any person under this Scheme;
- (b) a registered person were to a person approved under this Scheme; and
- (c) a suspension made under the Regulations were to a suspension under article 17,

and associated expressions shall be read accordingly.

**20.**—(1) The provisions of the Tribunal Regulations shall apply to an appeal under article 18 as they apply to an appeal under regulation 8(1) of the Suspension Regulations and as if those provisions were set out in this Scheme, but with the modifications referred to in paragraph (2).

(2) The Suspension Regulations shall apply as if any reference to—

- (a) an appeal under regulations 8(1)(a) and (b) of those Regulations were to an appeal under article 18 of this Scheme;
- (b) the registration of a person were to the approval of a person under this Scheme;
- (c) a suspension under those Regulations were to a suspension under article 17 of this Scheme; and
- (d) the respondent were to the Chief Inspector,

and any associated expressions shall be read accordingly.

### **Emergency steps**

**21.**—(1) If, in the case of any person approved as a child care provider under this Scheme—

- (a) the Chief Inspector applies to a justice of the peace for an order—
  - (i) withdrawing the approval;
  - (ii) varying or removing any condition to which the approval is subject; or
  - (iii) imposing a new condition; and
- (b) it appears to the justice that a child who is being, or may be, looked after by that person is suffering, or is likely to suffer, significant harm,

the justice may make the order.

(2) The withdrawal, variation, removal or imposition shall have effect from the time when the order is made.

(3) An application under paragraph (1) may be made without notice.

(4) An order made under paragraph (1) shall be made in writing.

(5) Where an order is made under this article, the Chief Inspector shall serve on the child care provider to whom the order relates, as soon as reasonably practicable after the making of the order—

- (a) a copy of the order;
- (b) a copy of any written statement of the Chief Inspector's reasons for making the application for the order which supported that application; and
- (c) notice of any right of appeal conferred by article 14.

(6) Where an order has been so made, the Chief Inspector shall, as soon as is reasonably practicable after the making of the order, notify the fact that such order has been made to—

- (a) any local authority known to the Chief Inspector in whose area the person concerned provides or provided child care;
- (b) any parent known to the Chief Inspector for whose child the person concerned provides or provided child care.

### **Fees**

**22.** The Chief Inspector may charge any person seeking his approval under this Scheme such reasonable fee as he shall, subject to the approval of the Secretary of State, determine.

25th February 2003

*Catherine Ashton*  
Parliamentary Under Secretary of State  
Department for Education and Skills

**MATTERS TO BE ADDRESSED BY APPROVAL CRITERIA**

- (1) The suitability of the child care provider to look after children.
- (2) Working in partnership with parents.
- (3) Acting with integrity and maintaining confidentiality.
- (4) Organisational skills.
- (5) Awareness of care, learning and play.
- (6) Health, safety and welfare of children.
- (7) Equal opportunities.
- (8) Special needs.
- (9) Managing behaviour.
- (10) Child protection.
- (11) Keeping of records.

## **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)).

Her Majesty’s Chief Inspector of Schools in England (“the Chief Inspector”) is the specified person for the purposes of giving approvals under this Scheme. Applications for approval are determined by the Chief Inspector in accordance with criteria set out in a Code of Practice issued by the Secretary of State. The matters which are to be addressed by the approval criteria are set out in the Schedule to the Scheme.

The Scheme further provides:

- (a) that an approval may only be given to an applicant who is a registered child minder at the time of the application;
- (b) for the Chief Inspector to operate a system for the determination of applications for approval and for assessment of continued compliance with the approval criteria;
- (c) for requiring the Chief Inspector to give notice of his intention to take specified steps relating to the refusal, withdrawal or variation of an approval;
- (d) for the suspension of an approval and for the taking of emergency steps;
- (e) for the right of appeal against decisions of the Chief Inspector;
- (f) for the charging of fees by the Chief Inspector.

The Scheme applies only in relation to England.

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Scheme 2003**

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