

Explanatory Memorandum to the Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2011

This Explanatory Memorandum has been prepared by Department for Children, Education, Lifelong Learning and Skills, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2011.

Huw Lewis
Deputy Minister for Children
28 March 2011

1. Description

This instrument amends the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007 scheme, substituting 'Nestor Primecare Services Ltd trading as Nestor Criminal Records Agency' (Nestor) with the Welsh Ministers as the approval body for the Childcare Approval Scheme Wales.

2. Matters of special interest to the Constitutional Affairs Committee

This instrument is required to come into force on 1st April 2011, meaning that a breach of the 21-day rule will be necessary. Early coming into force is required because our existing contract with Nestor expires 31st March 2011 and no further approvals can be granted after that date until an alternative approval body is specified.

Although Ministers agreed in November 2010 that CSSIW should undertake the role of approval body for the scheme, acting on behalf of Welsh Ministers, this arrangement was not ratified by CSSIW's management board until 17th February 2011.

Due to the delays in developing the new arrangements, observing the 21-day rule at this late stage would mean that CSSIW would be unable to approve any new carers, or renew existing annual approvals, until much later in April. This would carry with it some reputational risk for CSSIW and Welsh Assembly Government should there be such a gap in service leading to delays in the payment of financial support to parents through the Tax Credits system.

The Minister for Business and Budget has written to the Presiding Officer to notify him of the requirement to breach the 21 day rule.

3. Legislative background

The power(s) enabling this scheme to be made are contained in sections 12(5) and (6), (7) and (8) and 65(3) and (9) of the Tax Credits Act 2002. The Act transfers the authority to make such a scheme to a specified body (in this case the National Assembly for Wales). Section 65(3) of the Act provides that a power to make a scheme under the Act is exercisable by statutory instrument.

This legislation follows the Negative procedure, with variance of the 21-day rule as noted at 2.

4. Purpose & intended effect of the legislation

The purpose of this instrument is to enable Welsh Ministers to assume responsibility for operating the existing Childcare Approval Scheme Wales from 1st April 2011. The instrument also removes Nestor as the specified approval body for the scheme and makes consequential amendments and

also makes savings for approvals already granted and transitional provision for applications for approval made but not considered by Nestor when the revised scheme comes into force on 1 April 2011.

The effect of the Childcare Approval Scheme Wales is to enable those employing an approved childcarer (other than a relative) in the family home (nannies) to have access to the childcare element of the working family tax credit and other tax and NICs benefits associated with employer-related childcare voucher schemes, as well as offering these parents a degree of assurance on child protection, safety and levels of qualification. This supports the provision of quality, accessible and affordable childcare. CSSIW will undertake the functions of the approval body on behalf of the Welsh Ministers.

The Childcare Approval Scheme Wales came into force in 2007 and has, since that date, been administered by Nestor. Our contract with Nestor expires 31st March 2011, and after that date no further approvals may be granted.

Ministers have agreed to the ultimate replacement of the Childcare Approval Scheme Wales with a wider voluntary approval scheme to encompass care provided to children aged eight and over.

A wider voluntary Approved Childcare Scheme could offer the choice of registration to providers who are not eligible for compulsory registration. And by joining the voluntary Approved Childcare Scheme, providers demonstrate to parents who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children.

Parental choice will be potentially extended to all categories of provision, including sports clubs for children up to the age of 16, which will be eligible for financial support through the Working Tax Credit childcare element or tax and National Insurance contribution savings on employer supported childcare or childcare vouchers.

This will provide assurance in a way that is proportionate, providing parents with reassurance that their children are cared for in safe and suitable provision. This will:-

- Potentially allow a wide range of provision into the voluntary approval scheme, widening parental choice but without placing additional unnecessary burdens on providers;
- Require providers to demonstrate that the people, premises and provision are of a suitable standard;
- Support Local Authorities in carrying out their duty to secure sufficient childcare as Authorities will be able to identify providers that have demonstrated the suitability of the childcare that they offer;
- Support schools in identifying provision that is suitable to deliver childcare as part of their Community Focussed Schools offer; and
- Approved providers will benefit from parents understanding that essential standards have been met.

The detail of the wider voluntary approval scheme is still being considered, and it is hoped that the scheme will be in place by the end of the year.

Ministers have agreed that CSSIW will administer the new approval scheme and, in addition, will administer the existing Childcare Approval Scheme Wales until its eventual replacement by the new scheme, ensuring that approvals may continue to be granted until an alternative scheme is available.

Nestor were the only tenderer for the Childcare Approval Scheme Wales and there has not been a very wide take-up by carers in Wales. During the current financial year up to the end of February, 79 carers in total have been approved.

CSSIW is the single body responsible for regulation and approval of childcare in Wales, and its administration of the new scheme would ensure that funding would be contained within the Welsh Assembly Government, particularly during the scheme's infancy when we cannot be sure of take-up or rate of growth – enabling us to promote, develop and progress the scheme with a credible audit of public money invested. In the meantime, it is logical that CSSIW should assume the administration of the existing Childcare Approval Scheme Wales when our contract with Nestor expires on 31st March 2011. This will enable CSSIW to develop its systems in readiness for the wider scheme which it is intended should be in place by the end of 2011.

To enable CSSIW to undertake this new role, the existing scheme legislation needs to be amended in order to set out that Welsh Ministers are the specified approval body for the scheme, and that CSSIW will carry out the functions of the scheme on behalf of Welsh Ministers.

The Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2011 makes the required changes to enable CSSIW to undertake the role of approval body from 1st April in place of Nestor. The legislation also allows for the continuance of existing approvals granted by the former specified approval body – Nestor – to continue for their natural duration.

5. Consultation

As the amending instrument only changes the specified approval body for the scheme, a consultation was not undertaken as it was felt to be disproportionate and would not have represented a good use of resources.

6. Regulatory Impact Assessment (RIA)

An RIA has not been undertaken because the Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2011 does not make any significant changes to the existing Tax Credits (Approval of Childcare Providers) (Wales) Scheme 2007. Also, the legislation has no impact on the

statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).