

REGULATORY APPRAISAL

TAX CREDITS, WALES

THE TAX CREDITS (APPROVAL OF CHILDCARE PROVIDERS) (WALES) SCHEME 2007

Background

1. The Tax Credits Act 2002 gives the Wales Assembly Government the power to extend access to working tax credits and other tax and NICs benefits associated with employer-related voucher schemes, to parents who pay for childcare in their own home, provided the carer has been through an approval system. Specifically, parents are able to claim Working Tax Credits (WTC), and to receive Income Tax and National Insurance Contributions (NICs) advantages if using employer-provided childcare vouchers.
2. The aim of the policy is to make childcare more affordable and, as a result, to stimulate growth in supply. This in turn helps parents, particularly lone parents, those working atypical hours and those with disabled children, to obtain employment.
3. Similar arrangements have been in place in England since 6 April 2005, whilst Northern Ireland is in the process of implementation. In Scotland the tax and NIC benefits are available to parents that use carers employed by a registered nanny agency.
4. In Wales, eligibility for these same tax benefits is currently restricted to the following categories of childcare provider:
 - Any provision registered through the Care Standards Inspectorate for Wales (CSIW);
 - Childcare provided by a school; and
 - Certain childcare that has gained accreditation under a quality assurance framework, such as “Aiming High” for out of school clubs.
5. Care provided in the child’s home does not currently attract tax benefits unless the care is provided by a registered childminder (ie it does not include nannies).
6. The minimal legislative changes needed in order to entitle parents using childcare providers approved under a Welsh scheme to apply for appropriate tax credits and associated benefits may be achieved through consequential amendments to the Income Tax (Earnings and Pensions) Act 2003 and the Working Tax Credits (Entitlement and Maximum Rate) Regulations 2002. The Minister for Education, Lifelong Learning and Skills has written to the Paymaster General requesting that the necessary amendments be made to

these two pieces of legislation, and has secured agreement to this.

Purpose and intended effect of measure

7. The scheme extends the approval of unregulated childcare to include care provided in the child's home (other than that provided by a parent or relative). This will enable more parents in Wales to access the childcare element of the Working Tax Credit (WTC) and similar financial support, including tax/National Insurance Contributions (NICs) exemption for employer support/vouchers for registered or approved childcare.
8. A secondary purpose of the scheme is to extend a measure of child protection to children being cared for in the family home by putting in place checks that do not exist at the moment.
9. In particular, and under the terms of the proposed scheme, parents will have access to information regarding suitability of individuals (specifically through the proposals with regard to enhanced Criminal Records Bureau (CRB) checks and minimum levels of qualification).
10. Although it is difficult to quantify, the introduction of these checks should lessen the risk to children by deterring those with previous offences who might otherwise seek access to children in this sector, as well as screen out those who are otherwise unsuitable.

Risk Assessment

11. Failure to introduce a scheme would disadvantage parents in Wales, who do not currently enjoy the benefits of the Childcare Approval Scheme, which has been available in England since 6 April 2005.

Options

Option 1: Do Nothing

12. In contrast to the position elsewhere in the UK, parents who employ an appropriately qualified nanny in the family home in Wales would not gain access to the childcare element of the Working Tax Credit, or to the benefits associated with employer provided childcare vouchers.

Option 2: Make the Legislation

13. This legislation will allow parents who employ an appropriately qualified nanny in the family home in Wales to gain access to the childcare element of the Working Tax Credit, or to the benefits associated with employer provided childcare vouchers.
14. This option introduces a voluntary approval scheme, which requires evidence of identity for the purposes of enhanced CRB checks, as well as a minimum level of qualification.

15. The scheme would be similar to that already in place in England, though the proposed minimum level of qualification is higher than its English equivalent (specifically an existing qualification on the National Framework of Accredited Qualifications for early years, childcare and playwork at Level 2 or higher, as opposed to the short induction course required under the terms of the English scheme).

Benefits

16. This legislation will widen access to the childcare element of Working Tax Credit (WTC) and the tax and National Insurance Contributions (NICs) exemptions for employer-contracted childcare and childcare vouchers. This could have particular benefits for shift-workers and parents of children with disabilities who are more likely to be reliant on home-based care, as well as parents of older children.

17. Evidence from Her Majesty's Revenue and Customs suggests that the tax benefit for using registered or approved childcare averages approximately £45 per week. Assuming a 45 week year, and subtracting a £99 charge (which is the same fee as that charged in England), the annual net benefit per carer would be $45 \times 45 - £99 = £1,926$. Applying this to the estimated throughput, the economic benefit to parents in Wales accessing tax benefits under this scheme might be as much as £190k in the first full year of operation, rising to £578k in the third.

18. There will be minimum interference in domestic arrangements/ invasion of privacy, whilst at the same time giving parents more information and choice, and children some better level of protection.

Costs

19. The overall cost of the contract over a two year period is estimated to be a minimum of £56k depending on the number of applicants. The costs associated with delivering this scheme will be met from the Cymorth including Childcare BEL (revenue funding). The cost of the Criminal Records Bureau (CRB) checks will be covered by the applicant seeking approval, therefore, there are no costs to other organisations.

Competition Assessment

20. The proposals are intended to improve the affordability, quality and safety of childcare and are aimed at parents and individual carers rather than businesses. It is not believed that there are any competition concerns at present, as the measures will stimulate demand for approved childcare across the country.

21. It is not expected that these proposals will have any direct effect on small business other than nanny agencies, which may expect an increase in business. Benefits from the increasing number of approved nannies will be a matter for market competition on a level playing field.

22. The impact of the scheme on childminders has been considered. The market for childminding is very different from the market for home childcarers and it is generally considerably more costly to employ a home childcarer than to place a child with a childminder. Childminders will often be mothers experienced in raising children, while home childcarers, while often well qualified, may not be as experienced. Initially, it is expected that the main candidates for approval will be existing home childcarers, and approval will simply mean that the parents using them are better able to afford their services. For this reason, it is not believed that there will be a great impact on the demand for childminding.

Monitoring

23. Tax Credit claims resulting from approval under this scheme will be monitored by the Inland Revenue.

Consultation

With Stakeholders

24. A consultation exercise was carried out with key stakeholders between 26 July 2006 and 6 October 2006, which included parent organisations; nanny agencies; the voluntary sector; Confederation of British Industry; the Federation of Small Businesses; Her Majesty's Revenue and Customs; local authorities; the Criminal Records Bureau; the Care Standard's Tribunal and the Children's Commissioner 17 responses were received, the majority of which positively welcomed the proposals. A number of respondents called for the proposals to be extended to include care provided by relatives. However, due to exclusions in income tax and tax credit legislation in respect of care provided by relatives, the scope for the cost of that care to be claimed against tax credits or income tax is strictly limited, and the Assembly has no power to change tax legislation. There was also a strong call for guidance to be issued in respect of the scheme, and this will be developed by the Approval Body. The Approval Body is the body established by the proposed scheme, which will be responsible for delivering the approval scheme in its entirety. Nestor (a private sector organisation) has been identified as the preferred contractor. The Body's remit is prescribed within the terms of the scheme and will be consolidated in the context of a contract, the terms of which we are currently negotiating with Nestor. A list of those consulted is attached at Annex A and a summary of responses at Annex B.

With Subject Committee

25. This scheme was first notified to the Education, Lifelong Learning and Skills Committee via the list of forthcoming legislation on 20 September 2006 (ELLS (2)-12-06 Paper 2, item no ELL 18-06) and has remained on the list ever since. The Scheme was not identified for detailed scrutiny.

Review

26. It is also proposed to evaluate the scheme during its first two years of operation

to ensure that the processes are effective and that the outcomes match the intentions. It is unclear at this stage who will be undertaking this review.

Summary

27. This scheme will increase the number of parents able to access tax credits and tax/National Insurance Contributions (NICs) exemptions for employer-supported childcare.
28. It will also introduce a level of checks and qualifications, which do not exist for home based carers, other than approved home childcarers, at present.
29. It balances the need to extend financial support and access to information in order to offer children more protection, against the imposition of further regulation on sectors of the childcare market, which do not warrant it.

Annex A

List of Consultees

Parent Organisations

Nanny agencies

Voluntary Sector Partners

Children's Information Service

Confederation of British Industry

Federation of Small Businesses

Equal Opportunities Commission

Disability Rights Commission

County Librarians

Her Majesty's Revenue and Customs

Children and Young People's Framework Partnerships

Local Authorities

Children's Partnerships

Young People's Partnerships

Early Years Advisers

Genesis Wales

Criminal Records Bureau

Care Standards Tribunal

Care Standards Inspectorate for Wales

Care Council for Wales

Children's Commissioner for Wales

Assembly Members

Annex B

Consultation on Approved Childcare in the Family Home

Schedule of Respondents

1. Torfaen County Borough Council (EYDCP)
2. Children's Information Service in Wales
3. Jobcentre Plus
4. Rhondda Cynon Taf EYDCP – Confidential
5. Carmarthenshire Children's Partnership
6. HM Revenue and Customs – Confidential
7. National Day Nurseries Association
8. Wrexham Early Years Forum – Confidential
9. Children in Wales
10. Mr and Mrs Ruck (Parent/carer)
11. Children's Information Service - Ceredigion
12. Monmouthshire Children's Partnership
13. Wrexham EYDCP
14. Criminal Records Bureau – response restricted to desire to work closely with WAG on the scheme
15. Welsh Language Board - response restricted to need to ensure scheme is fully bilingual and that applicants will be able to follow every stage of the process through the medium of Welsh
16. Wales Council for Voluntary Action – response restricted to commenting on the need to give full consideration to responses received from specialist organisations
17. Disability Rights Commission – Nil response

Summary of Responses to Consultation on Approved Childcare in the Family Home

Q1. Do you consider it correct to proceed on the basis of approval rather than full registration?

The overall response to this was positive. 10 out of 13 (substantive) respondents agreed that approval was preferable to full registration, 4 of whom saw it as an important first step towards full registration. The need to be clear (in guidance etc) on the level of approval being granted and the difference between approval and full registration was identified in a number of responses.

Three of the respondents considered that full registration was required. There was concern that differentiating between home childcarers and other forms of childcare gave an inconsistent and confusing message to parents and might deter them from using nurseries or childminders. One respondent felt that the proposals might give parents a false sense of security with regard to the quality of care being provided and that extending the numbers of childcarers with little training and minimum regulation undermined the work being done to raise standards in the sector.

Q2. Do you agree that the proposed criteria for the approval of an individual carer are appropriate?

9 of the 13 respondents fully supported the proposals for approval criteria, although all of them indicated that this was subject to confirmation that the proposed CRB check would be compulsory. The terms of the scheme itself are clear on this issue and provide for a compulsory check. The confusion probably arose from interpretation of the consultation document rather than from the intent. 1 of these 5 also expressed concern that the proposals were not sufficiently clear in terms of handling positive CRB disclosures.

2 of these respondents agreed with the proposals generally, but suggested that additional training in food hygiene and child protection would be useful. It was also suggested that those 'working towards' a level 2 should be considered for eligibility, in the same vein as childminders 'work towards' a level 3.

2 respondents felt that the proposal for a minimum Level 2 qualification was too low, and that the criteria should reflect CSIW's recommendation that a lone worker should be working towards a Level 3. By comparison, 2 respondents felt that the threshold was too high and that the wages of these more highly qualified (than those eligible under the terms of the English scheme) carers might be beyond the means of low income families receiving tax credits.

Q3. Do you think parents would need guidance on how to employ an

approved career? If so, what should this cover?

The response to this question was a resounding “Yes”. Issues identified for inclusion in guidance were:

- The limits of ‘light touch’ approval and the difference between this and registration
- Parental responsibility
- Tax credit eligibility and application (with a link to HMRC website)
- Build on ‘Choosing Childcare’ – advice on finding the right sort of care for the child and for the parent.
- Employment (interviews/ references/law/contracts/wages/insurance/ expectations/time off for training etc)
- Child protection
- Health and Safety
- Renewal procedures and timing
- Dealing with concerns/complaints/appeal/withdrawal of approval

A need to link with the CIS was identified, as well as a possible link to the proposed communications campaign to raise awareness of the Working Tax Credit.

One Local Authority indicated that it already provided an information pack on employing a nanny, which could be replicated.

Q4. Renewal of Approval

The majority of substantive responses (11) supported the proposals for renewal, with a couple of common caveats – in particular the need to ensure that the renewals system would be able to cope with demand and would be reliable and reasonably fast. The other issue raised was the need to stress to applicants that renewal applications would need to be made on a timely basis in order to ensure continuity of tax credit eligibility.

One respondent felt that bi-annual registration would be sufficient.

One respondent expressed concern as to how information would be passed to relevant bodies if a carer changed employer in between renewals. One questioned why home childcarers should be treated any differently from other registered childcarers, who renew approval every three years, and one felt that initial approval would suffice.

Q5. Cancellation of Approval

Again, the majority of substantive responses (9) were supportive of this element of

the proposals. A number of these bodies felt that the proposed arrangements were a little complicated and that guidance on the process would need to be provided. Another important message was around the issue of parental responsibility for informing the approval body of any concerns. Several organisations felt that parents should be *required* to report such concerns rather than 'advised' to do so.

2 organisations did not support the proposals. They had concerns around the issue of parental responsibility, as described above, but also around quality. Concern was expressed that, where quality of care was poor, parents would have nowhere to turn other than to vote with their feet which, in turn, was felt to be unrealistic in the context of the childcare market. Registration rather than approval was considered to be the only solution.

2 further organisations were unsure on this question and a need for clarity and transparency of the criteria on which the approval body would base its decisions to withdraw approval was identified.

Q6: Do you agree with the proposed provisions for providing a right of appeal?

All those who responded agreed with this proposal. Some felt that the right of appeal should be available both to the employee and to the employer. Again, the need for guidance on this aspect of the scheme was identified.

Q7: Do you agree that the proposed level of fee (£99) is appropriate?

7 out of 13 respondents agreed with this aspect of the proposals, some noting that it had parity with England. Others were unclear on who was responsible for paying the fee, and that if it fell to the nanny then the sum should be approximately halved. Concern was also expressed that, for families eligible to receive working family tax credits, £99 was a significant additional amount to find in respect of childcare.

Q8: Do you agree with the proposals to contract with a private contractor to approve nannies?

8 of those who responded agreed with the proposals, although the question was raised as to who would be responsible for regulating and auditing the contractors.

4 organisations fundamentally disagreed with the proposals, two of whom felt strongly that these childcare providers should be treated in the same way as other providers and be subject to CSIW regulation.

1 respondent did not express a view on this.

Q9: Do you agree that the information given in the Regulatory Appraisal adequately describes the costs and benefits of each option.

All those who replied agreed that the information given in the Regulatory Appraisal adequately described the costs and benefits of each option. The need for ongoing monitoring and evaluation of the scheme was identified.

Q10: Further Comments

The following issues were highlighted in this section:

- A significant proportion of those responding saw the scheme as a good opportunity to extend the childcare workforce by the inclusion of grandparents and other family members caring for children. Concern was expressed that this opportunity had not been taken.
- The need for an information protocol between CIS and the approval body was identified, to ensure access to accurate and up to date information on all approved childcare workers.
- One organisation asked whether any additional training would be provided in respect of this qualification and if so, who would pay for it; who would be responsible for updating the first aid qualification; and whether 18 was to be the minimum age for approval.
- Concern was expressed that the scheme was not child-centred, and went against WAG's stated objective of improving the quality childcare of childcare in Wales.
- Several respondents felt that the scheme was long overdue.