

Number: WG41188



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Approval of Home Childcare Providers (Wales) Scheme 2021

Date of issue: 11 September 2020
Action required: Responses by 4 December 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The Welsh Government is developing a scheme under section 60 of the Government of Wales Act 2006 for the purpose of approving nannies as childcare providers and to allow parents to claim relevant UK Government benefits/tax relief while employing a nanny approved under the scheme.

The new scheme is intended to replace the Childcare at Home Voluntary Approval Scheme (commonly referred to as the “Nanny Scheme”).

How to respond

Responses can be emailed to:
talkchildcare@gov.wales

The closing date for responses is 4 December 2020.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Childcare and Play Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

email: talkchildcare@gov.wales

Also available in Welsh at:

<https://llyw.cymru/nanis-fel-darparwyr-gofal-plant>

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

The Approval of Home Childcare Providers (Wales) Scheme 2021

The Welsh Government is developing a scheme under section 60 of the Government of Wales Act 2006 to approve nannies as childcare providers and to allow parents to claim relevant benefits/tax relief, for example Tax Credits or Universal Credit, in respect of employing a ‘nanny’.

Background

The Childcare at Home Voluntary Approval Scheme is a voluntary scheme for approving home childcare providers (“nannies”) who meet certain basic criteria. The scheme was introduced to meet the commitment in the Childcare Strategy for Wales (November 2005) to ensure that parents who use childcare practitioners within their home have the option of using nannies who have sought voluntary approval.

One of the original reasons for establishing the Tax Credits (Approval of Childcare Providers) (Wales) Scheme 2007 was to allow parents to make claims for childcare tax or benefit concessions. Under the terms applied by the UK Government, those funds could only be claimed in relation to ‘approved’ childcare providers. As nannies are not within the categories of childcare providers required to register with Care Inspectorate Wales (CIW), thus demonstrating their approval, the scheme was in part devised to address that gap. Inclusion on the scheme approved nannies as qualifying childcare for those purposes.

The benefits/tax relief that parents can access include universal credit, working tax credits, child tax credits and tax free childcare.

What do we mean by a “nanny” and the type of childcare provided in this context? This is how childcare provided by a “nanny” is defined by the new scheme:

Qualifying childcare means care provided by a person for reward for—

- (a) a child or children for particular parents (“the first parents”), wholly or mainly in the home of the first parents, or
- (b) a child or children for particular parents (“the first parents”), and in addition for a child or children for different parents (“the second parents”), wholly or mainly in the home of the first or second parents or in both homes.

Qualifying childcare does not include—

- (a) child minding which is subject to registration pursuant to Part 2 of the Children and Families (Wales) Measure 2010⁽¹⁾,
- (b) care provided by a person for reward for a child aged 12 years or more,
- (c) childcare provided wholly or mainly in the home of the child’s parent by a parent or relative of the child, or
- (d) childcare 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 children by a parent or relative.

(1) 2010 nawm 1.

Nannies approved under the scheme are not subject to statutory regulation but must meet certain criteria, thereby offering at least a basic level of assurance to the families employing them.

The 2007 Nanny Scheme enabled nannies to apply for 12 months approval. The criteria for approval were that the applicant:

- be 18 years of age or over;
- holds a relevant paediatric first aid certificate;
- has a qualification which is on a list held by the Welsh Ministers or the Approval Body; and
- not be barred from a regulated activity relating to children, or be considered otherwise unsuitable to work with or have unsupervised access to children.

In February 2019, the introduction of The Welfare Reform Act 2012 (Commencement No.32 and Savings and Transitional Provisions) Order 2019 repealed section 12 of the Tax Credits Act 2002, which provided the underpinning legal basis for the Tax Credits (Approval of Childcare Providers) (Wales) Scheme 2007 (the “2007 Nanny Scheme”). Despite a period of brief disruption during the months of March-August, we have been able to work with our UK Government partners, HMRC and DWP, to ensure that nannies can continue to be approved in Wales and that families do not miss out on important benefits while a replacement scheme is developed.

Approvals for the 2007 Nanny Scheme are currently managed by CIW as the approval body on behalf of the Welsh Ministers and currently there are no plans for that to change this under the new scheme.

Purpose of this consultation

The Welsh Government has developed a new draft scheme to replace the 2007 Nanny Scheme and would welcome the view of people who have an interest or who may be affected by the change.

The title being proposed for the new scheme is The Approval of Home Childcare Providers (Wales) Scheme 2021. We will refer to it from now on in this document as “the new Nanny Scheme”.

Who are we consulting?

This consultation document and the new Nanny Scheme is being published on the Welsh Government website, with feedback being invited by 4 December 2020.

Stakeholders being targeted for their views include the following:

- Department of Work and Pensions (DWP)
- Her Majesty’s Revenue and Customs (HMRC)
- Care Inspectorate Wales
- Social Care Wales

- CWLWM, the umbrella organisation representing the interests of childcare providers in Wales. The Professional Association for Childcare and Early Years Cymru (PACEY) is a member of CWLWM and will have the main interest
- Welsh Government Childcare Offer for Wales Stakeholder Reference Group
- Local Authorities
- Nannies and families employing nannies
- Nanny agencies based in Wales

Timescale/Priorities

The Welsh Ministers would like the new Nanny Scheme to be made and recognised in UK Government law at the earliest opportunity. We are giving stakeholders a period of 12 weeks to consider the scheme and to provide feedback and comments.

New Nanny Scheme (differences from previous scheme)

The new Nanny Scheme is broadly similar to the existing scheme but the Welsh Government has taken the opportunity to make some changes.

The main changes relate to:

- (i) Approval criteria
- (ii) Clarity around when a person should apply to renew their approval
- (iii) Provision of information to the approval body
- (iv) Refusal or withdrawal of approval and representation process

The changes are set out in more detail below and there are also specific questions on which we are seeking feedback.

(i) Approval Criteria

The approval criteria for the new Nanny Scheme has been amended and now includes six criteria, as set out below:

A person who submits an application for approval as an approved home childcare provider must—

- (a) be 18 years of age or over,
- (b) have obtained one of the qualifications specified in a list maintained by the approval body or such other person appointed by the Welsh Ministers,
- (c) hold a relevant first aid certificate,
- (d) have public liability insurance which covers death, injury, damage or other loss,
- (e) provide an enhanced criminal record certificate or submit an application to receive that certificate from the approval body, and;
- (f) not be barred from a regulated activity relating to children⁽²⁾ or be considered otherwise unsuitable to work with or have unsupervised access to children.

Question 1

Do you agree with the six proposed criteria for approval?

(2) The barred list is a list maintained by the Disclosure and Barring Service of individuals who are prevented by law from working with children.

Question 2

Do you agree that approval should only be given to nannies aged 18 and over?

Question 3

We have added in the requirement for a nanny to have Public Liability Insurance, which brings the new Nanny Scheme into line with the other home nations. Do you think this will cause an issue for nannies not being able to join the approval scheme?

(ii) Applying for renewal of approval

The new Nanny Scheme makes it clear that a person wishing to renew their approval will need to make an application to renew an approval at least 42 days in advance of the expiry of their approval.

A nanny seeking approval must fulfil the following criteria.

(1) A person who submits an application to renew an approval under this Scheme must

- (a) provide a relevant first aid certificate to the approval body,
- (b) have obtained one of the qualifications specified in a list maintained by the approval body,
- (c) provide an enhanced criminal records certificate or application for that certificate to the approval body,
- (d) have public liability insurance which covers death, injury, damage or other loss, and
- (e) not be barred from a regulated activity relating to children⁽³⁾ or be considered otherwise unsuitable to work with or have unsupervised access to children.

Question 4

Do you agree with the proposed approach to renewals?

(iii) Provision of information to the approval body

The new scheme asks approved nannies to notify the approval body if they are convicted of a crime or receive a caution as soon as reasonably practicable. Failure to notify the approval body could result in the nanny's approval being withdrawn.

Question 5

Do you agree with this approach?

(iv) Refusal or withdrawal of approval and representation process

The new Nanny Scheme sets out the process for refusal or withdrawal of approvals and explains that the approval body must provide written notice of its proposal to refuse or withdraw an application for approval. The written notice must contain the reasons why refusal or withdrawal of approval is proposed and information about how the representation process can be made.

(3) As above

The applicant has 28 days to make representations to the approval body. If an applicant proceeds with the representations process a decision maker will be appointed who has had no prior involvement in the application. The approval body is required to notify the applicant of the outcome of the process within 28 days of them making their representation. The Approval Body may issue an immediate suspension of a nannie's approval where it is considered necessary and appropriate but this will be pending the outcome of the representation process.

Question 6

Do you agree with this approach?

Summary of Responses

Following the consultation process, a summary of responses will be published in February 2021 prior to the final Scheme being published.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Approval Criteria

Question 1

Do you agree with the six proposed criteria for approval?

Question 2

Do you agree that approval should only be given to nannies aged 18 and over?

Question 3

We have added in the requirement for a nanny to have Public Liability Insurance, which brings the new Nanny Scheme into line with the other home nations. Do you think this will cause an issue for nannies not being able/wanting to join the approval scheme?

Applying for renewal of approval

Question 4

Do you agree with the proposed approach to renewals?

Provision of information to the approval body

Question 5

Do you agree to this approach?

Refusal or withdrawal of approval and representation process

Question 6

Do you agree to this approach?

Other

Question 7

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

2020 No. (W.)

SOCIAL CARE, WALES

The Approval of Home Childcare Providers (Wales) Scheme 2020

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme provides for the approval of home childcare providers, often referred to as nannies or au pairs.

There is no requirement for home childcare providers to seek approval under the Scheme, however parents accessing home childcare approved through the Scheme may be able to get help with the costs of childcare, by accessing benefits such as child tax credits, the childcare element of Universal Credit, the childcare voucher scheme and Tax Free Childcare.

This Scheme makes provision for the administrative arrangements required to approve home childcare providers.

Part 1 sets out the meaning of the terms qualifying childcare and a home childcare provider.

Part 2 sets out the system for approval and renewal under the Scheme, and the maximum duration of the approval. Paragraph 10 enables the approval body to recover the fee for obtaining an enhanced criminal records certificate from the applicant.

Part 3 makes provision about the sharing of information by the approval body, and the requirements upon home childcare providers approved under the Scheme to notify the approval body of any criminal offences, or cautions received.

Part 4 makes provision for a process enabling a person to challenge a decision by the approval body to refuse or withdraw approval under the Scheme.

Part 5 sets out the transitional arrangements upon this Scheme coming into effect.

2020 No. (W.)

SOCIAL CARE, WALES

The Approval of Home Childcare Providers (Wales) Scheme 2020

This Scheme is made by the Welsh Ministers, in exercise of the power conferred upon them by section 60 of the Government of Wales Act 2006(4).

Title and commencement

2.—(1) The title of this Scheme is the Approval of Home Childcare Providers (Wales) Scheme 2020.

(2) This Scheme comes into operation on the xxx.

Interpretation

3. In this Scheme—

“the 2007 Scheme” (“*Cynllun 2007*”) means the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007(5);

“the approval body” (“*y corff cymeradwyo*”) means the Welsh Ministers or such other person as the Welsh Ministers may appoint to administer the scheme;

“child” (“*plentyn*”) means a person under the age of 16, but a person who attains the age of 16 remains a child for the purposes of Part 1 from the date on which he attained that age until immediately before 1 September which follows that date;

“enhanced criminal records certificate” (“*tystysgif cofnod troseddol manwl*”) for the purpose of this Scheme means an enhanced criminal record certificate issued under section 113B of the Police Act 1997(6), which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act);

“home childcare provider” (“*darparwr gofal plant yn y cartref*”) means a person who provides or intends to provide qualifying childcare;

“parent” (“*rhiant*”) includes any person who—

- (a) has parental responsibility for a child, within the meaning given in section 3 of the Children Act 1989(7);
- (b) has been approved as a foster parent, within the meaning given in regulation 2 of the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(8);
- (c) fosters a child privately, within the meaning given in section 66 of the Children Act 1989;

“qualifying childcare” (“*gofal plant cymhwysol*”) has the meaning given in paragraph 5;

“relative” (“*perthynas*”) in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

“relevant first aid certificate” (“*tystysgrif cymorth cyntafberthnasol*”) means a certificate in respect of a course of first aid training—

- (d) which is suitable to the care of babies and children;
- (e) which includes training in the following areas—
 - (i) dealing with emergencies,
 - (ii) resuscitation,
 - (iii) choking,
 - (iv) shock, and
 - (v) anaphylactic shock;
- (f) which has been undertaken by the applicant not more than three years before the date upon which the application for approval is made.

(5) S.I. 2007/226 (W. 20) as amended by S.I. 2008/2687 (W. 237), S.I. 2011/993 (W. 146), S.I. 2010/2582 (W. 216) (c.123), S.I. 2013/2273 (W. 219) and S.I. 2016/98 (W. 47).

(6) 1997 c. 50.

(7) 1989 c. 41.

(8) S.I. 2019/169 (W. 42).

PART 1

Requirements of the Scheme

Requirements of the Scheme

4. A person is an approved home childcare provider under this Scheme—
- (i) if they are approved by the approval body in accordance with paragraph 4;
 - (ii) in respect of the provision by them of qualifying childcare.

Home childcare provider

- 5.—(1) A home childcare provider may make an application to the approval body for approval under the Scheme
- (2) If the approval body is satisfied that the approval criteria are met it must grant approval.
- (3) A person who has been granted approval under sub-paragraph (2) ceases to be so approved if that approval is withdrawn by the approval body.
- (4) The approval body may withdraw an approval if satisfied that the approval criteria are no longer met by that person.

Qualifying childcare

- 6.—(1) Qualifying childcare means care provided by a person for reward for—
- (a) a child or children for particular parents (“the first parents”), wholly or mainly in the home of the first parents, or
 - (b) a child or children for particular parents (“the first parents”), and in addition for a child or children for different parents (“the second parents”), wholly or mainly in the home of the first or second parents or in both homes.
- (2) Qualifying childcare does not include—
- (a) child minding which is subject to registration pursuant to Part 2 of the Children and Families (Wales) Measure 2010⁽⁹⁾,
 - (b) care provided by a person for reward for a child aged 12 years or more other than in accordance with sub-paragraph (1)(a) or (b),
 - (c) childcare provided wholly or mainly in the home of the child’s parent by a parent or relative of the child, or
 - (d) childcare 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 children by a parent or relative.

PART 2

Approval system

Approval system

- 7.—(1) The approval body must operate a system for the determination of applications for approval made to it under this Scheme and must make adequate arrangements to publicise the details of that system.
- (2) The system referred to in sub-paragraph (1) must—
- (a) provide for a procedure by which an applicant may apply for approval,

⁽⁹⁾ 2010 nawm 1.

- (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 for checking whether an individual is approved under the Scheme, and
- (f) provide for the keeping of appropriate records relating to applications received for approval, to include records relating to the grant, refusal or withdrawal of such approval.

Approval criteria

8. A person who submits an application for approval as an approved home childcare provider must—

- (a) be 18 years of age or over,
- (b) have obtained one of the qualifications specified in a list maintained by the approval body,
- (c) hold a relevant first aid certificate,
- (d) have public liability insurance which covers death, injury, damage or other loss,
- (e) provide an enhanced criminal record certificate or an application for that certificate to the approval body, and
- (f) not be barred from a regulated activity relating to children⁽¹⁰⁾ or be considered otherwise unsuitable to work with or have unsupervised access to children.

Period of approval

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

(2) Nothing in this paragraph prejudices the application of paragraph 4(4).

Renewal of approval

10.—(1) A person who wishes to remain an approved home childcare provider in accordance with this Scheme is required to make an application to renew an approval at least 42 days in advance of the expiry of their approval.

(2) A person who submits an application to renew an approval under this Scheme must —

- (a) provide a relevant first aid certificate to the approval body,
- (b) have obtained one of the qualifications specified in a list maintained by the approval body,
- (c) provide an enhanced criminal records certificate or application for that certificate to the approval body,
- (d) have public liability insurance which covers death, injury, damage or other loss, and
- (e) not be barred from a regulated activity relating to children⁽¹¹⁾ or be considered otherwise unsuitable to work with or have unsupervised access to children.

Fees

11. The approval body may recover the cost of obtaining an enhanced criminal records certificate in respect of an application together with any reasonable administrative costs incurred in processing the application—

- (a) for approval as a home childcare provider under the Scheme, or
- (b) to renew an approval as a home childcare provider under the Scheme.

⁽¹⁰⁾ The barred list is a list maintained by the Disclosure and Barring Service of individuals who are prevented by law from working with children.

⁽¹¹⁾ As above.

PART 3

Provision of information

Provision of information to the approval body

12.—(1) Where a person approved as a home childcare provider under this Scheme is convicted of a criminal offence whether in Wales or elsewhere they are required to notify the approval body as soon as reasonably practicable providing detail of—

- (a) the date and place of conviction,
- (b) the offence of which the person has been convicted, and
- (c) the penalty imposed on the person in respect of the offence.

(2) Where a person approved as a home childcare provider under this Scheme receives a caution whether in Wales or elsewhere they are required to notify the approval body in writing as soon as reasonably practicable providing detail of—

- (a) the offence for which the person received a caution,
- (b) the date of the caution, and
- (c) any conditions attached to the caution.

(3) Any failure to notify the approval body in accordance with subparagraph (1) or (2) may result in withdrawal of approval in accordance with paragraph 4(4).

Provision of information by approval body

13. The approval body must supply—

- (a) to the Commissioners for Her Majesty's Revenue and Customs ("HMRC") such information as they may require for the discharge of any of HMRC's functions relating to tax credits, tax free childcare and the childcare voucher scheme and which is information relating to the approval, or the refusal or withdrawal of approval of persons under this Scheme;
- (b) to the Secretary of State such information as the Secretary of State may require for the discharge of the Secretary of State's functions relating to universal credit and which is information relating to the approval or the refusal or withdrawal of approval, of persons under this Scheme.

PART 4

Representations

Refusal or withdrawal of approval

14.—(1) If the approval body proposes to refuse an application for approval or renewal, or to withdraw an approval granted under this Scheme, it must provide the applicant or the approved home child care provider with written notice of its proposal.

(2) Written notice of proposal provided in accordance with subparagraph (1) must contain—

- (a) reasons why refusal or withdrawal of approval is proposed, and
- (b) information about how representations may be made.

(3) The applicant may make representations whether orally or in writing in respect of the proposal within 28 days of issue of the written notice.

(4) Where a notice has been served under sub-paragraph (1) the approval body must not determine any proposal until either—

- (a) any representations have been made by the applicant,
- (b) the applicant has notified that they do not intend to make any representations, or

(c) the period during which representations can be made has elapsed.

(5) The approval body may issue an immediate suspension of approval, where considered necessary and appropriate, pending determination of the proposal.

Representations process

15. The representations process must—

- (a) provide for the appointment of a decision maker who has had no previous involvement with the application, and
- (b) provide for the applicant to be notified in writing of the outcome of the representations process, and reasons for it, within 28 days of receipt of representations.

The role of the decision maker

16. In reaching a decision in relation to the proposal the decision maker may—

- (i) uphold the approval body's proposal to refuse or withdraw approval as a home childcare provider,
- (ii) uphold the representations and grant or renew approval as a home childcare provider under this Scheme, or
- (iii) uphold the representations allowing the approval to continue.

PART 5

Savings and transitional provisions

Savings and transitional provisions

17.—(1) Notwithstanding the coming into force of this Scheme, where a person is already approved as a childcare provider under the 2007 Scheme, that approval continues to have effect until whichever is the earliest, the date—

- (a) the approval is withdrawn in accordance with paragraph 6(2) of the 2007 Scheme,
- (b) the approval expires in accordance with paragraph 10(1) of the 2007 Scheme, or
- (c) approval is granted as a home childcare provider in accordance with this Scheme.

(2) Where an application for approval as a childcare provider has been submitted, in accordance with the 2007 Scheme but has not been granted or approved by the approval body before the [insert date] the application is to be determined under this Scheme.

Name

Title of Minister, one of the Welsh Ministers

Date