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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 152**

**CHILDREN AND YOUNG PERSONS**

**The Adoption Support Services and  
Allowances (Scotland) Regulations 2009**

*Made - - - - 21st April 2009*  
*Laid before the Scottish*  
*Parliament - - - - 22nd April 2009*  
*Coming into force - - 28th September 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 3(b), 9(3), 13(1), 49(7), 71(3) and (4), and 117(2) of the Adoption and Children (Scotland) Act 2007<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Adoption Support Services and Allowances (Scotland) Regulations 2009 and come into force on 28th September 2009.

**Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“adoption allowance” means an allowance payable in accordance with regulations 10 to 16;

“adoptive child” means—

- (a) a child who has been adopted or in respect of whom an applicant has given notice of their intention to adopt under section 18 of the Act; or
- (b) a child whom an adoption agency has matched with a prospective adopter or placed for adoption;

“adoptive parent” means—

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(1) 2007 asp 4.

- (a) a person who has adopted a child or has given notice of their intention to adopt under section 18 of the Act; or
- (b) a person with whom an adoption agency has matched a child or has placed a child for adoption;

“foster carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009<sup>(2)</sup>;

“income support” means income support under Part VII of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;

“jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995<sup>(4)</sup>; and

“kinship carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009;

### **Notices to children**

3.—(1) If the person to whom notice is to be given under these Regulations is a child under the age of 12 the notice must be given to the child’s adoptive parent or to the adult that the local authority or registered adoption service consider most appropriate.

(2) If the person to whom notice is to be given is a child aged 12 or over but, in the opinion of the local authority or registered adoption service, that child is not of sufficient age and understanding for it to be appropriate to give that child such notice, the notice must be given to that child’s adoptive parent or to the adult that the local authority or registered adoption service consider most appropriate.

## **PART 2**

### **Adoption support services**

#### **Adoption support services for persons outside the area**

4.—(1) Section 9 of the Act applies to a local authority in respect of the following persons who reside outside the authority’s area—

- (a) an adoptive child whom the authority has placed for adoption or who has been adopted after being placed for adoption by the authority;
- (b) a natural parent of such a child;
- (c) an adoptive parent of such a child; and
- (d) a child of such an adoptive parent (whether or not adopted).

(2) But section 9 ceases to apply—

- (a) at the end of the period of three years from the date of the adoption order or when the adoptive child attains the age of 18, whichever is sooner; or
- (b) at any point before the end of the period of three years from the date of the adoption order or when such a child attains the age of 18, if sooner, if the following agree—
  - (i) the person in paragraph (1);
  - (ii) the local authority in whose area that person is resident; and

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(2) S.S.I. 2009/[ ].

(3) 1992 c. 4.

(4) 1995 c. 18.

(iii) the local authority which made the assessment of the needs of that person for adoption support services.

(3) Nothing in this regulation prevents a local authority from providing adoption support services to persons outside their area where they consider it appropriate to do so.

### **Request for assessment or reassessment**

5.—(1) Where the request of a person falling within section 9(1) of the Act for an assessment relates to a particular adoption support service, or it appears to the local authority that the person's needs for adoption support services may be adequately assessed by reference to a particular adoption support service, the local authority may carry out the assessment by reference only to that particular service.

(2) Where a local authority receive a request of a person falling within section 9(1) of the Act for an assessment of the person's needs for adoption support services, the local authority must start that assessment as soon as practicable and no later than 4 weeks from receipt of the request.

(3) Where a relevant member<sup>(5)</sup> under section 49(2) of the Act requires a reassessment of their needs for adoption support services in relation to a particular adoption support service, or it appears to the local authority that the relevant member's needs for adoption support services may be adequately reassessed by reference to a particular adoption support service, the local authority may carry out the reassessment by reference only to that particular service.

(4) Where a relevant member under section 49(2) of the Act requires a reassessment of their needs for adoption support services, the local authority must start that reassessment as soon as practicable and no later than 4 weeks from receipt of notification of the requirement from the relevant member.

### **Procedure for assessment**

6.—(1) Where the local authority carry out an assessment of a person's needs for adoption support services under section 9 of the Act they must have regard to such of the following considerations as are relevant to the assessment—

- (a) the needs of the person being assessed and how these might be met;
- (b) the needs of the relevant family and how these might be met;
- (c) the needs, including developmental needs, of the adoptive child and how these might be met;
- (d) the parenting capacity of the adoptive parent;
- (e) wider family and environmental factors;
- (f) in the case of an adoptive child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and
- (g) any previous assessment of needs for adoption support services undertaken in relation to the person in question.

(2) Where the local authority carry out an assessment of a person's needs for adoption support services they must—

- (a) where they consider it appropriate to do so, interview the person and, where the person is an adoptive child, that child's adoptive parents;
- (b) where they consider that the person may have a need for services from a Health Board, consult that Health Board;
- (c) seek advice and information from such other persons as they consider appropriate; and

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(5) "Relevant member" is defined in section 47(2) of the Act and that meaning is incorporated into section 49 by subsection (8)(b).

- (d) prepare a written report of the assessment.

**Procedure for reassessment**

7.—(1) Where the local authority carry out a reassessment of the needs for adoption support services of a relevant member under section 49 of the Act they must have regard to such of the following considerations as are relevant to the reassessment—

- (a) the needs of the relevant member being reassessed and how these might be met;
- (b) the needs of the relevant family and how these might be met;
- (c) the needs, including developmental needs, of the adoptive child and how these might be met;
- (d) the parenting capacity of the adoptive parent;
- (e) wider family and environmental factors;
- (f) in the case of a child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and
- (g) any previous assessment or reassessment of needs for adoption support services undertaken in relation to the relevant member in question.

(2) Where the local authority carry out a reassessment of a relevant member’s needs for adoption support services they must—

- (a) where they consider it appropriate to do so, interview the relevant member and, where the relevant member is an adoptive child, that child’s adoptive parents;
- (b) where they consider that the relevant member may have a need for services from a Health Board, consult that Health Board;
- (c) seek advice and information from such other persons as they consider appropriate; and
- (d) prepare a written report of the assessment.

**Notice of proposal to provide adoption support services**

8.—(1) Before making a decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation.

(2) The local authority must first give the person notice of the proposed decision and the time allowed for making representations, which must be no less than 2 weeks from the notice of the proposed decision.

(3) The notice must contain the following information—

- (a) a statement as to the person’s needs for adoption support services;
- (b) where the assessment or reassessment relates to the person’s need for an adoption allowance, the basis upon which that allowance is determined;
- (c) whether the local authority propose to provide the person with adoption support services;
- (d) the services (if any) that are proposed to be provided to the person;
- (e) if an adoption allowance is to be paid to the person, the proposed amount that would be payable; and
- (f) any proposed conditions under regulation 15 (conditions for payment of adoption allowances).

(4) In a case where the local authority propose to provide adoption support services and are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by a draft of that plan prepared in accordance with section 45(3) of the Act.

(5) The local authority must not make a decision until—

- (a) the person has made representations to the local authority or notified the local authority that they are satisfied with the proposed decision and, where applicable, the draft plan; or
- (b) the period of time for making representations has expired.

### **Notification of decision as to adoption support services or adoption allowances**

**9.**—(1) After making their decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must give the person notice of that decision, including the reasons for it.

(2) Where the local authority are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by that plan.

(3) If the local authority decide that an adoption allowance is to be provided, notice given under paragraph (1) must include the following information—

- (a) the method of the determination of the amount of the adoption allowance;
- (b) where an adoption allowance is to be paid periodically or by instalments—
  - (i) the amount of the allowance;
  - (ii) the frequency with which the payment will be made;
  - (iii) the period for which the adoption allowance is to be paid; and
  - (iv) when the first payment of the adoption allowance is to be made.
- (c) where the adoption allowance is to be paid as a single payment, when the payment is to be made;
- (d) where the adoption allowance is to be paid subject to any conditions imposed in accordance with regulation 15 (conditions for payment of adoption allowances), those conditions, the date (if any) by which the conditions are to be met and the consequences of failing to meet the conditions;
- (e) the arrangements and procedure for review, variation and termination of adoption allowances; and
- (f) the responsibilities of—
  - (i) the local authority under regulation 16 (review of adoption allowances payable periodically or by instalments); and
  - (ii) the adoptive parent pursuant to any agreement mentioned in regulation 15.

## **PART 3**

### **Adoption allowances schemes**

#### **Circumstances in which adoption allowances may be paid**

**10.**—(1) An adoption allowance is payable to an adoptive parent for the purpose of supporting the placement of the adoptive child or the continuation of adoption arrangements after an adoption order is made.

(2) Such an allowance is payable only in the following circumstances—

- (a) where it is necessary to ensure that the adoptive parent can look after the adoptive child;
- (b) where the child needs special care which requires expenditure of resources by reason of illness, disability, emotional or behavioural difficulties or the continuing consequences of past abuse or neglect;
- (c) where it is necessary for the adoption agency to make any special arrangements to facilitate the placement or the adoption by reason of—
  - (i) the age or ethnic origin of the child; or
  - (ii) the desirability of the child being placed with the same adoptive parent as the child's brother or sister (whether of full or half blood) or with a child with whom the child previously shared a home;
- (d) where such an allowance is to meet recurring costs in respect of travel for the purpose of visits between the child and a relative; or
- (e) where the adoption agency consider it appropriate to make a contribution to meet the following kinds of expenditure—
  - (i) expenditure on legal costs, including fees payable to a court in relation to an adoption;
  - (ii) expenditure for the purpose of introducing an adoptive child to the child's adoptive parent; or
  - (iii) expenditure necessary for the purpose of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of looking after the child.

### **Remuneration for former foster carers and kinship carers**

**11.—(1)** An adoption allowance may include an element of remuneration but only where the decision to include it is taken before the adoption order is made and the adoption agency consider it to be necessary to facilitate the adoption in a case where—

- (a) the adoptive parent has been a foster carer or kinship carer in respect of the adoptive child; and
- (b) an element of remuneration was included in the payments made by the adoption agency to the adoptive parent in relation to the fostering or caring of the child.

(2) But that element of remuneration ceases to be payable at the end of the period of two years from the adoption order unless the adoption agency consider its continuation to be necessary having regard to the exceptional needs of the child or any other exceptional circumstances.

### **Payment of adoption allowances**

**12.** An adoption allowance may be paid—

- (a) periodically, if it is provided to meet a need which is likely to give rise to recurring expenditure; or
- (b) in any other case, by a single payment or, if the adoption agency and adoptive parent agree, by instalments.

### **Factors to be taken into account in determining the amount of an adoption allowance**

**13.—(1)** This regulation applies where the adoption agency carry out an assessment of a person's need for an adoption allowance.

(2) In determining the amount of any adoption allowance, the adoption agency must take account of any other grant, benefit, allowance or resource which is available to the person in respect of their needs as a result of the adoption of the adoptive child.

(3) Subject to paragraphs (4) and (5) the adoption agency must also take account of the following factors—

- (a) the person's financial resources, including any tax credit or benefit, which would be available to the person if the child lived with the person;
- (b) the amount required by the person in respect of their reasonable outgoings and commitments (excluding outgoings and commitments in respect of the child); and
- (c) the financial needs of the child.

(4) The adoption agency must disregard the factors in paragraph (3) where they are considering providing an allowance in respect of—

- (a) reasonable legal costs, including fees payable to a court, where an adoption order is applied for in respect of an adoptive child; or
- (b) expenditure for the purpose of introducing an adoptive child to that child's adoptive parents.

(5) The adoption agency may disregard any of the factors in paragraph (3)—

- (a) where they are considering providing an allowance in respect of—
  - (i) initial costs of accommodating an adoptive child;
  - (ii) recurring costs in respect of travel for the purpose of visits between the child and a relative; or
  - (iii) any special care or special arrangements referred to in regulation 10(2)(b) or (c) (circumstances in which adoption allowances may be paid) in relation to an adoptive child; or
- (b) where they are considering including an element of remuneration under regulation 11 (remuneration for former foster carers and kinship carers).

### **Termination of adoption allowances**

**14.** An adoption allowance ceases to be payable to an adoptive parent if—

- (a) the adoptive child ceases to have a home with the adoptive parent (unless the adoption agency consider its continuation to be necessary having regard to the needs of the child or any other exceptional circumstances);
- (b) the child ceases full time education or training and commences employment;
- (c) the child qualifies for income support or jobseeker's allowance in the child's own right;
- (d) the child attains the age of 18, unless the child continues in full time education or training, in which case the allowance may continue until the end of the course or training that the child is then undertaking; or
- (e) any period agreed between the adoption agency and the adoptive parent for the payment of the allowance expires.

### **Conditions for payment of adoption allowances**

**15.—(1)** Where an adoption allowance is to be paid periodically, or by instalments, it is not payable until the adoptive parent or, in the case of adoption by a couple, each adoptive parent, has agreed to the following conditions—

- (a) that the adoptive parent will inform the adoption agency as soon as is reasonably practicable—
    - (i) of any change of their address;
    - (ii) if the adoptive child dies;
    - (iii) if any of the changes mentioned in regulation 14 (termination of adoption allowances) occurs; or
    - (iv) if there is a change in the adoptive parent’s financial circumstances or the financial needs or resources of the child which may affect the amount of the allowance payable to the adoptive parent,
 and, where the information is given orally, that the adoptive parent will confirm it in writing within seven days; and
  - (b) that the adoptive parent will complete and supply the adoption agency with an annual statement as to the following matters—
    - (i) their financial circumstances;
    - (ii) the financial needs and resources of the child; and
    - (iii) their address and whether the child still has a home with the adoptive parent.
- (2) The adoption agency may specify the timescale within which, and purposes for which, any payment of an allowance should be utilised.
- (3) Subject to paragraph (4), where any condition imposed in accordance with this regulation is not complied with, the adoption agency may—
- (a) vary, suspend or terminate payment of an allowance; and
  - (b) seek to recover all or part of an allowance they have paid.
- (4) Where the condition not complied with is a failure to provide an annual statement in accordance with an agreement referred to in paragraph (1), the adoption agency must not take any steps under paragraph (3) until—
- (a) they have sent to the adoptive parent who entered into the agreement a written reminder of the need to provide an annual statement; and
  - (b) 28 days have expired since the date on which that notice was sent.

### **Review of adoption allowances payable periodically or by instalments**

**16.—**(1) This regulation applies where the adoption agency provide adoption allowances payable periodically or by instalments.

- (2) The adoption agency must review the adoption allowance—
  - (a) annually, on receipt of the annual statement from the adoptive parent mentioned in regulation 15 (conditions for payment of adoption allowances);
  - (b) if any relevant change of circumstances or any breach of a condition mentioned in regulation 15 comes to their attention;
  - (c) at any stage in the preparation or implementation of the adoption support plan<sup>(6)</sup> if they consider it appropriate.
- (3) In paragraph (2) a relevant change of circumstances is any of the changes that the adoptive parent has agreed to notify under regulation 15.
- (4) If the adoption agency propose, as a result of the review, to reduce or terminate an adoption allowance before making that decision the adoption agency must give the adoptive parent an

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<sup>(6)</sup> “Adoption support plan” is defined in section 45 of the Act.



opportunity to make representations and for that purpose they must give the adoptive parent notice of the proposed decision and the period allowed for making representations.

(5) But paragraph (4) does not prevent the adoption agency from suspending an adoption allowance pending that decision.

(6) The notice in paragraph (4) must contain the information mentioned in regulation 8(3) (notice of proposal to provide adoption support services).

(7) The adoption agency must, having regard to the review, and after considering any representations received within the period specified in the notice decide whether to vary or terminate payment of the adoption allowance and whether to seek to recover all or part of any adoption allowance that has been paid.

(8) The adoption agency must give the person notice of their decision including the reasons for it.

### **Savings provision**

17. Where a person was receiving, before their revocation, an adoption allowance under the Adoption Allowance (Scotland) Regulations 1996(7) that person may continue to receive payments so made which, had there been no revocation, would have fallen to that person, or that person may agree to receive, instead of the continued payments, payments in accordance with an adoption allowances scheme under these Regulations.

St Andrew's House,  
Edinburgh  
21st April 2009

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers

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(7) S.I.1996/3257. These Regulations were made under sections 9(2) and (3) and 51A of the Adoption (Scotland) Act 1978 (c. 28) and are revoked following the repeal of these sections by the Adoption and Children (Scotland) Act 2007 section 120(2) and schedule 3.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in Part 2 (regulations 4 to 9) for local authorities to provide adoption support services as part of the adoption service maintained by them under section 1(1) of the Adoption and Children (Scotland) Act 2007. Part 3 (regulations 10 to 17) makes provision in respect of adoption allowances schemes prepared by adoption agencies (local authorities and registered adoption services) to pay allowances to persons who have adopted or intend to adopt a child. Regulation 3 makes provision to notify an appropriate adult if the person to whom notice is given under the Regulations is a child.

Regulation 4 specifies the circumstances in which a local authority will provide adoption support services to persons outwith its area. Regulation 5 provides that an assessment or reassessment of needs for adoption support services may be conducted by a local authority by reference to one specific service rather than the whole range of potential services and that the local authority must commence the assessment or reassessment within 4 weeks. Regulations 6 and 7 concern the procedure for assessments and reassessments respectively, and list the considerations that the local authority must have regard to when carrying out the assessment or reassessment. Regulation 8 provides that, following the assessment or reassessment but prior to making a decision about providing adoption support services, the local authority must give notice of the proposal to the person requesting the assessment or re-assessment and allow an opportunity for representations. Regulation 9 provides that that person must receive notification and full details of the decision.

Regulation 10 sets out the only circumstances in which allowances are payable to an adoptive parent. Regulation 11 provides for the limited circumstances in which an allowance may include an element of remuneration and that such remuneration can only last for more than 2 years in exceptional circumstances. Regulation 12 permits allowances to be paid periodically or by a single payment, but a single payment can be paid by instalments. Regulation 13 specifies the factors that an adoption agency must take into account, or disregard, in determining the amount of an allowance. Regulation 14 sets out the circumstances in which an allowance ceases to be payable to an adoptive parent. Regulation 15 provides that, in relation to allowances paid periodically or by instalments, the adoptive parents must agree to certain conditions before any payment is made. Where a condition is breached the allowance may be ended. Regulation 16 provides for allowances paid periodically or by instalments to be reviewed by the adoption agency annually or when there is a breach of the conditions or a change of circumstances. Regulation 17 makes savings provision in relation to the Adoption Allowances (Scotland) Regulations 1996 which are revoked following the repeal of the Adoption (Scotland) Act 1978.