
STATUTORY INSTRUMENTS

1991 No. 2030

CHILDREN AND YOUNG PERSONS

The Adoption Allowance Regulations 1991

Made - - - - *9th September 1991*
Laid before Parliament *12th September 1991*
Coming into force - - *14th October 1991*

The Secretary of State for Health, in exercise of the powers conferred by sections 9(2) and (3) and 57A of the Adoption Act 1976⁽¹⁾ and of all other powers enabling him in that behalf hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Adoption Allowance Regulations 1991 and shall come into force on 14th October 1991.

(2) In these Regulations unless the context otherwise requires—

“the Act” means the Adoption Act 1976;

“adopters” means the persons who have adopted or intend to adopt a child or, where there is only one such person, that person;

“adoption agency” means an approved adoption society or a local authority;

“adoption panel” means a panel established in accordance with regulation 5 of the Adoption Agencies Regulations 1983⁽²⁾;

“attendance allowance” means an allowance under section 35 of the Social Security Act 1975⁽³⁾;

“child benefit” means a benefit under section 1 of the Child Benefit Act 1975⁽⁴⁾;

“fostering allowance” means the amount of money paid by way of maintenance for a child placed with a foster parent pursuant to section 23(2)(a) or section 59(1)(a) of the Children Act 1989 (placement with foster parents and others by local authorities and voluntary organisations);

“income support” means income support under section 20 of the Social Security Act 1986⁽⁵⁾;

(1) 1976 c. 36; section 57A was inserted by paragraph 25 of Schedule 10 to the Children Act 1989 (c. 41).

(2) S.I.1983/1964.

(3) 1975 c. 14.

(4) 1975 c. 61.

(5) 1986 c. 50.

“mobility allowance” means an allowance under section 37A of the Social Security Act 1975;
“unemployment benefit” means unemployment benefit under section 14 of the Social Security Act 1975.

(3) In these Regulations unless the context otherwise requires, a reference to a numbered regulation is to the regulation in these Regulations bearing that number, and a reference to a numbered paragraph is to the paragraph of that regulation bearing that number.

Circumstances in which an allowance may be paid

2.—(1) Without prejudice to paragraph (3), an allowance may be paid where one or more of the circumstances specified in paragraph (2) exists and the adoption agency—

- (a) is making the arrangements for the child’s adoption; and
- (b) has decided—
 - (i) in accordance with regulation 11(1) of the Adoption Agencies Regulations 1983 that the adoption by the adopters would be in the child’s best interests, and
 - (ii) after considering the recommendation of the adoption panel, that such adoption is not practicable without payment of an allowance.

(2) The circumstances referred to in paragraph (1) are—

- (a) where the adoption agency is satisfied that the child has established a strong and important relationship with the adopters before the adoption order is made;
- (b) where it is desirable that the child be placed with the same adopters as his brothers or sisters, or with a child with whom he has previously shared a home;
- (c) where at the time of the placement for adoption the child—
 - (i) is mentally or physically disabled or suffering from the effects of emotional or behavioural difficulties, and
 - (ii) needs special care which requires a greater expenditure of resources than would be required if the child were not so disabled, or suffering from the effects of emotional or behavioural difficulties;
- (d) where at the time of the placement for the adoption the child was mentally or physically disabled, or suffering from the effects of emotional or behavioural difficulties, and as a result at a later date he requires more care and a greater expenditure of resources than were required at the time he was placed for adoption because there is—
 - (i) a deterioration in the child’s health or condition, or
 - (ii) an increase in his age; or
- (e) where at the time of the placement for adoption it was known that there was a high risk that the child would develop an illness or disability and as a result at a later date he requires more care and a greater expenditure of resources than were required at the time he was placed for adoption because such illness or disability occurs.

(3) An allowance may be paid by the agency where before these Regulations come into force—

- (a) an allowance was being paid by the agency to the adopters in respect of a child in accordance with a scheme which is revoked by section 57A(4) of the Act (revocation of schemes approved under section 57(4) of the Act) or under section 57(5)(b) of the Act (revocation of scheme by the Secretary of State) and the adopters have agreed to receive (instead of such allowance) an allowance complying with these Regulations, or
- (b) the agency decided that the adopters are eligible to receive an allowance in accordance with a scheme which is revoked by section 57A(4) of the Act or under section 57(5)(b) of the Act and—

- (i) no payment has been made pursuant to that decision, and
 - (ii) any conditions to which the agency's decision to pay such an allowance is subject are satisfied.
- (4) In each case before an allowance is payable the adoption agency shall require the adopters to have agreed to—
- (a) inform the adoption agency immediately if—
 - (i) the child no longer has his home with them (or either of them), if they have changed their address, or if the child dies, or
 - (ii) there is any change in their financial circumstances or the financial needs or resources of the child; and
 - (b) complete and supply the adoption agency with an annual statement of their financial circumstances and the financial circumstances of the child.
- (5) An allowance may not be paid from a date before the date of placement for adoption and may be paid from such later date as may be determined by the adoption agency and notified to the adopters.

Amount of the allowance

- 3.—(1) The allowance shall be of such amount as the adoption agency determines in accordance with paragraphs (2) to (4).
- (2) In determining the amount of allowance the adoption agency shall take into account—
- (a) the financial resources available to the adopters including any financial benefit which would be available in respect of the child when adopted;
 - (b) the amount required by the adopters in respect of their reasonable outgoings and commitments (excluding outgoings in respect of the child); and
 - (c) the financial needs and resources of the child.
- (3) In assessing the income available to the adopters the adoption agency shall disregard mobility and attendance allowance payable in respect of the child and, where the adopters are in receipt of income support, child benefit.
- (4) The allowance paid by the adoption agency shall not—
- (a) include any element of remuneration for the care of the child by the adopters;
 - (b) exceed the amount of the fostering allowance excluding any element of remuneration in that allowance which would be payable if the child were fostered by the adopters.

Procedure in determining whether an allowance should be paid

- 4.—(1) Subject to paragraphs (2) and (3), an adoption agency shall, before an adoption order is made in respect of a child whose adoption they are arranging or have arranged—
- (a) consider whether an allowance may be paid in accordance with paragraphs (1) and (2) of regulation 2 (circumstances in which an allowance may be paid);
 - (b) supply information to the adopters about allowances including the basis upon which amounts of allowances are determined;
 - (c) give notice in writing in accordance with paragraph (4) to the adopters of their proposed decision as to whether an allowance should be paid and the proposed amount, if any, which would be payable;

- (d) consider any representations received from the adopters within the period specified in the notice;
 - (e) make a decision as to whether an allowance should be paid, determine the amount, if any, which would be payable and notify the adopters of that decision and determination.
- (2) The adoption agency shall not be required—
- (a) in a case where the adopters may agree in accordance with regulation 2(3)(a) to receive payments complying with these Regulations instead of payments which are made to them in accordance with a scheme revoked by section 57A(4) of the Act (revocation of schemes approved under section 57(4) of the Act) or under section 57(5)(b) of the Act (revocation of scheme by the Secretary of State)—
 - (i) to comply with sub-paragraph (a) of paragraph (1),
 - (ii) to comply with sub-paragraph (b) of that paragraph before the adoption order is made provided that they do so as soon as is reasonably practicable after 14 October 1991, or
 - (iii) to comply with sub-paragraphs (c) to (e) of that paragraph unless and until an application is received by the adopters for an allowance to be made under these Regulations instead of under a scheme which has been revoked; or
 - (b) in a case where regulation 2(3)(b) applies, to comply with either of the following—
 - (i) sub-paragraph (a) of paragraph (1), or
 - (ii) sub-paragraphs (b) to (e) of that paragraph before an adoption order is made provided that they do so as soon as is reasonably practicable after 14 October 1991;
 - (c) in a case to which regulation 2(2)(d) or (e) of these Regulations applies, to determine the amount of an allowance unless or until—
 - (i) there is a deterioration in the child’s health or condition, or an increase in his age, (in a case to which regulation 2(2)(d) applies) or
 - (ii) the onset of the illness or disability (in a case to which regulation 2(2)(e) applies, and as a result the child requires more care and a greater expenditure of resources than were required at the time at which he was placed for adoption.
- (3) An approved adoption society which holds itself out as not being an adoption agency which normally pays allowances shall not be required to comply with subparagraphs (a) and (b) of paragraph (1) and need comply with sub-paragraphs (c), (d) and (e) of that paragraph as respects any adopters only if they have considered whether or not to pay an allowance to those adopters.
- (4) A notice under paragraph (1)(c) shall state the period of time within which the adopters may make representations to the adoption agency concerning the proposed decision or determination and the adoption agency shall not make a decision or determination under paragraph (1)(e) until after the expiry of that period.

Information about allowances

5. After a decision has been made to pay an allowance, the adoption agency shall notify the adopters in writing of the following—
- (a) the method of the determination of the amount of the allowance;
 - (b) the amount of the allowance as initially determined;
 - (c) the date of the first payment of the allowance;
 - (d) the method of payment of the allowance and frequency with which and the period for which payment will be made;
 - (e) the arrangements and procedure for review, variation and termination of the allowance;

- (f) the responsibilities of—
 - (i) the agency under regulation 6, and
 - (ii) the adopters pursuant to their agreement under paragraph (4) of regulation 2, in respect of the allowance in the event of a change in circumstances of the adopters or the child.

Review, variation and termination of allowances

6.—(1) The adoption agency shall review an allowance—

- (a) annually, on receipt of a statement from the adopters as to—
 - (i) their financial circumstances;
 - (ii) the financial needs and resources of the child;
 - (iii) their address and whether the child still has a home with them (or either of them); and
- (b) if any change in the circumstances of the adopters or the child, including any change of address, comes to their notice.

(2) The adoption agency may vary or suspend payment of the allowance if, as a result of a review, they consider that, the adopters' need for it has changed or ceased since the amount of the allowance was last determined.

(3) Where the adopters fail to supply the adoption agency with an annual statement in accordance with their agreement under regulation 2(4)(b), the adoption agency may deem the adopters' need for an allowance to have ceased until such time as a statement is supplied.

(4) Where payment of an allowance is suspended the agency may recommence payment if as a result of a review the adoption agency considers that the financial circumstances of the adopters have become such that an allowance should be paid.

(5) The adoption agency shall terminate payment of an allowance when—

- (a) the child ceases to have a home with the adopters (or either of them);
- (b) the child ceases full-time education and commences employment or qualifies for a placement on a Government training scheme;
- (c) the child qualifies for income support or unemployment benefit in his own right;
- (d) the child attains the age of eighteen, unless he continues in full-time education, when it may continue until he attains the age of twenty-one so long as he continues in full-time education; or
- (e) any period agreed between the adoption agency and the adopters for the payment of the allowance expires.

Confidentiality, Preservation and Access to Records

7.—(1) Subject to regulation 15 of the Adoption Agencies Regulations 1983, any information obtained or recommendations received or decisions made by virtue of these Regulations shall be treated by the adoption agency as confidential.

(2) The adoption agency shall place a record of the details of each allowance in respect of a child including details of any determination under regulation 3 and review under regulation 6 on the case records that they are required to set up under the Adoption Agencies Regulations 1983.

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

Signed by authority of the Secretary of State for Health.

9th September 1991

Virginia Bottomley
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to enable adoption agencies to pay allowances to persons who have adopted or intend to adopt a child in pursuance of arrangements made by such agencies. They replace schemes approved by the Secretary of State under section 57(4) of the Adoption Act 1976 which are revoked on the coming into force of paragraph 25 of Schedule 10 to the Children Act 1989.

The Regulations make provision for persons who have already adopted a child and are in receipt of payments under a revoked scheme to receive instead, subject to their agreement, payments under these Regulations and for persons who have been found to be eligible for an allowance but who have not received payments under such schemes before these Regulations come into force (regulations 2(3) and 4(2)); for the other circumstances in which adoption agencies may pay allowances (regulation 2(1) and (2)) and in each case, the agreement of the adopters to supply the adoption agency with information which is required before an allowance may be paid; for determination of the amount of the allowance (regulation 3); for the procedure to be followed by adoption agencies before an adoption order is made in cases other than those where an allowance is being paid under a revoked scheme (regulation 4). This will require adoption agencies, amongst other things, to supply information to adopters about allowances (except where an approved adoption society holds itself out as not being an agency which normally pays allowances) and to consider representations from adopters.

They also make provision for certain information to be supplied to adopters by adoption agencies, for their responsibilities regarding review, variation and termination of allowances, after a decision to pay an allowance has been made (regulations 5 and 6) and for information and records of allowances to be placed on the case records kept by adoption agencies under the Adoption Agencies Regulations 1983 and to be treated as confidential in accordance with those Regulations (regulation 7).