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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 438**

**ADOPTION**

**The Adoption Allowance Regulations (Northern Ireland) 1996**

*Made* - - - - *20th September 1996*

*Coming into operation* *4th November 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 10(1) and 59A of the Adoption (Northern Ireland) Order 1987(1) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Adoption Allowance Regulations (Northern Ireland) 1996 and shall come into operation on 4th November 1996.

(2) In these Regulations—

“the Order” means the Adoption (Northern Ireland) Order 1987;

“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 a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(2), an authorised HSS trust as defined in regulation 1 of the Adoption Agencies Regulations (Northern Ireland) 1989(3) or an adoption society registered under Article 4 of the Order;

“adoption panel” means a panel established in accordance with regulation 5 or regulation 5A of the Adoption Agencies Regulations (Northern Ireland) 1989;

“child benefit” means child benefit under section 137 of the Contributions and Benefits Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4);

“disability living allowance” means disability living allowance under section 71 of the Contributions and Benefits Act;

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(1) S.I.1987/2203 (N.I. 22); Article 59A was inserted by paragraph 164 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))  
(2) S.I. 1972/1265 (N.I. 14)  
(3) S.R. 1989 No. 253, as amended; the relevant amending Regulations are S.R. 1994 No. 65  
(4) 1992 c. 7

“fostering allowance” means the amount of money paid by way of maintenance for a child placed with a foster parent pursuant to Article 27(2)(a) or Article 75(1)(a) of the Children (Northern Ireland) Order 1995<sup>(5)</sup> (placement with foster parents and others by authorities and voluntary organisations);

“incapacity benefit” means incapacity benefit under section 30A of the Contributions and Benefits Act<sup>(6)</sup>;

“income support” means income support under section 122 of the Contributions and Benefits Act;

“invalid care allowance” means invalid care allowance under section 70 of the Contributions and Benefits Act;

“jobseeker’s allowance” means jobseeker’s allowance under Article 3 of the Jobseekers (Northern Ireland) Order 1995<sup>(7)</sup>;

“maternity allowance” means maternity allowance under section 35 of the Contributions and Benefits Act;

“severe disablement allowance” means severe disablement allowance under section 68 of the Contributions and Benefits Act.

### **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 (Northern Ireland) 1989 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—

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(5) S.I. 1995/755 (N.I. 2)

(6) 1992 c. 7; section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(7) S.I. 1995/2705 (N.I. 15)

- (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 operation—
  - (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 Article 59A(4) of the Order (revocation of schemes approved under Article 59(4) of the Order) 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 Article 59A(4) of the Order 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 agree to—
  - (a) inform the adoption agency immediately if—
    - (i) the child no longer has his home with them (or either of them),
    - (ii) they change their address,
    - (iii) the child dies, or
    - (iv) 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 disability living 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 it is arranging or has arranged,—

- (a) consider whether an allowance may be paid in accordance with paragraphs (1) and (2) of regulation 2;
- (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 its 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 Article 59A(4) of the Order (revocation of schemes approved under Article 59(4) of the Order)—
  - (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 it does so as soon as is reasonably practicable after 4th November 1996, or
  - (iii) to comply with sub-paragraphs (c) to (e) of that paragraph unless an application is received by the agency for an allowance to be made under these Regulations instead of under a scheme which has been revoked;
- (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 it does so as soon as is reasonably practicable after 4th November 1996; or
- (c) in a case to which regulation 2(2)(d) or (e) applies, to determine the amount of an allowance unless—
  - (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) A registered adoption society which holds itself out as not being an adoption agency which normally pays allowances shall not be required to comply with sub-paragraphs (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 it has 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;
- (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, it considers that the adopters' need for the allowance 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 incapacity benefit, income support, invalid care allowance, maternity allowance, severe disablement allowance, or jobseeker's allowance in his own right;

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*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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- (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 (Northern Ireland) 1989, 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 it is required to set up under the Adoption Agencies Regulations (Northern Ireland) 1989.

Sealed with the Official Seal of the Department of Health and Social Services on 20th September 1996.

L.S.

*P. A. Conliffe*  
Assistant Secretary

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## 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 under Article 59(4) of the Adoption (Northern Ireland) Order 1987 which are revoked on the coming into operation of Article 59A of that Order.

The Regulations make provision for determining the circumstances in which adoption agencies may pay allowances, including making payment to persons who have been receiving, or have been found eligible to receive, payments under a revoked scheme (regulation 2); for determining 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 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 representation from adopters.

The Regulations also make provision for certain information to be supplied to adopters by adoption agencies, for adoption agencies' 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 (Northern Ireland) 1989 and to be treated as confidential in accordance with those Regulations (regulation 7).