

EXECUTIVE NOTE TO

THE ADOPTION SUPPORT SERVICES AND ALLOWANCES (SCOTLAND)
REGULATIONS 2009 (SSI 2009/152)

1. The above instrument (“the Regulations”) was made 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 (“the 2007 Act”). The instrument is subject to negative resolution procedure.

2. These Regulations are one of a series of statutory instruments being enacted to implement the core provisions of the 2007 Act. The purpose of the instrument is to prescribe:

- the manner in which an agency makes an assessment / reassessment of adoption support services,
- the matters which are considered in making that assessment / reassessment,
- the procedure to be followed when considering the payment of adoption allowances and,
- the factors that should be taken into account when considering allowances and the review, variation and termination of that allowance.

3. The Regulations are designed to ensure that those persons identified in section 1 of the 2007 Act can access and receive the ongoing support for an adoption required to ensure the improved outcomes associated with adoption.

Legislative Background

4. The Adoption Policy Review Group (APRG) phase 2 report, which led to the 2007 Act, included specific recommendations on the provision of adoption support services and allowances to those affected by adoption. The 2007 Act enacts a number of these recommendations to ensure that all those affected by adoption have the right to access support. The 2007 Act defines what should be considered as support and makes it a requirement that a person identified in the 2007 Act who applies for support be assessed and that a plan is put in place to provide that support where it is needed. The 2007 Act also places a requirement on local authorities to prepare an Adoption Allowances Scheme.

5. The purpose of the Regulations is to further address issues raised by the APRG phase 2 report which were not appropriate to place in primary legislation. In doing so, the Regulations provide for the circumstances in which a local authority will provide adoption support services to persons outwith its area (regulation 4); the procedure for assessments and reassessments, the considerations that the local authority must have regard to when carrying out the assessment or reassessment and the notification process the local authority must comply with in making a decision about assessment or reassessment of adoption support service requirements (regulations 5 to 9).

6. With regard to adoption allowances, the provisions replace those in the Adoption Allowance (Scotland) Regulations 1996 (S.I No. 3257) (“the 1996 Regulations”). The Regulations set out the circumstances in which allowances are payable to an adoptive parent (regulation 10) and when an allowance may include an element of remuneration (regulation 11). The factors that an adoption agency must take into account, or disregard, in determining the amount of an allowance are specified (regulation 13) as are the circumstances in which an

allowance ceases to be payable to an adoptive parent (regulation 14). Allowances may be paid periodically or by a single payment (regulation 12) and the adoptive parents must agree to certain conditions before any payment is made (regulation 15). 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; when there is a breach of the conditions; or if there is a change of circumstances.

Consultation

7. Draft regulations were published on the Consultations section of the Scottish Government web site. This consultation was supplemented by discussions with the Association of Directors of Social Work's Adoption and Fostering Sub-Group, the Scottish Committee of the British Association for Adoption and Fostering and a group of social work practitioners organised by the British Association of Adoption and Fostering. Responses were in broad agreement with the principles of the regulations. However some restructuring of the order of the regulations has taken place as a result of comments included in those responses. Some technical changes were made to the regulations to clarify their intent and add certain timescales for aspects of the process of assessment for adoption support and allowances.

Financial Effects

Adoption Support Services

8. The APRG identified that a more formal legal framework around adoption support should be provided for, extending the eligibility to services and ensuring that everyone entitled to adoption support is aware of their entitlement. The 2007 Act explicitly states the existing range of support services and provides a non-exhaustive list of those persons eligible for support services. The 2007 Act provides for regulations to be made further prescribing the provision of adoption support services. The 2007 Act and these Regulations do not provide for any adoption support services that could not previously be considered under the existing legislation, but they do make the existing services more explicit. We therefore expect any increase in costs in providing adoption support services to be in line with an increase in the number of applications for such services. Any costs incurred, due to the increase in applications, will be borne by local authorities within their existing budgets.

Adoption Allowances

9. The Regulations essentially restate the provisions in the 1996 Regulations with respect to the determination of an adoption allowance, the circumstances under which an allowance can be made and the review, variation or termination of the allowance. The only new provision is where an adoption allowance may include an element of remuneration - where the adopters were formerly fostering or kinship carers of the child, and where the decision to include remuneration is taken before the adoption order is made. The Regulations do not set the level of adoption allowance as this will be determined by the local authority by reference to the child's needs and the specific circumstances of each case.

10. Adoption allowances are already provided for under the existing legislation and therefore, we do not foresee an increase in the cost to local authorities. Any additional cost would be consequent to an increase in successful applications for adoption allowances and

not because of provisions in these Regulations. Any remuneration included in an adoption allowance will not exceed that already being paid and will only continue for 2 years from the date of the adoption order.

Current and future costs associated with these measures

11. Information on the expenditure on adoption support services or adoption allowances by local authorities is hard to separate out from the expenditure on other Social Work Services, and is not collected by the Scottish Government. When asked during the parliamentary passage of the 2007 Act, local authorities were not able to provide exact figures for this expenditure. Therefore, extra resources can only be made available based upon existing information, including the equivalent funding provided during the implementation of the Adoption and Children Act 2002 in England and Wales. This was outlined in the Financial Memorandum provided to the committee during the passage of the 2007 Act.

12. Neither the Education Committee nor the Finance Committee raised concerns about the calculations associated with how much extra funding was equivalent to that provided to local authorities in England and Wales, with concerns associated only with securing the extra funding. Calculations based upon the £70 million which was made available to local authorities over 3 years by the then Department for Education and Skills indicated that an extra £2.35 million would be required over a similar period to support the implementation of the provisions in Scotland.

Funding provided to support the regulations

13. As indicated in annex B of the concordat agreement between the Scottish Government and COSLA the previously ring-fenced funding, amounting to £2 million, to support the implementation of the 2007 Act was rolled-up into the general revenue grant funding being provided to local authorities from 2008-09 to 2010-2011.

Children, Young People and Social Care Directorate