

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2009 No. 152**

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

**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>(1)</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 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<sup>(2)</sup> 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.

---

(1) “Adoption support plan” is defined in section 45 of the Act.

(2) 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.