
STATUTORY INSTRUMENTS

1996 No. 3257 (S.247)

CHILDREN AND YOUNG PERSONS

The Adoption Allowance (Scotland) Regulations 1996

Made - - - - *18th December 1996*
Laid before Parliament *31st December 1996*
Coming into force - - *1st April 1998*

The Secretary of State, in exercise of the powers conferred on him by sections 9(2) and (3) and 51A of the Adoption (Scotland) Act 1978(1), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Adoption Allowance (Scotland) Regulations 1996 and shall come into force on 1st April 1998.

Interpretation

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

“the Act” means the Adoption (Scotland) Act 1978;

“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 local authority or an approved adoption society within the meaning of the Act;

“adoption panel” means a panel established in accordance with regulation 7 of the Adoption Agencies (Scotland) Regulations 1996(2);

“attendance allowance” means an allowance under section 64 of the Social Security Contributions and Benefits Act 1992(3);

“child benefit” means a benefit under section 141 of the Social Security Contributions and Benefits Act 1992;

(1) 1978 c. 28; section 9(2) was amended by paragraph 5 of Schedule 2 to the Children (Scotland) Act 1995 (c. 36); section 51A was inserted by paragraph 25 of Schedule 2 to that Act.
(2) S.I.1996/3266.
(3) 1992 c. 4.

“disability living allowance” means an allowance under section 71 of the Social Security Contributions and Benefits Act 1992;

“fostering allowance” means the amount of money paid by way of an allowance for a child placed with a foster carer under regulation 9 of the Fostering of Children (Scotland) Regulations 1996(4);

“income support” means income support under section 124 of the Social Security Contributions and Benefits Act 1992;

“jobseeker’s allowance” means an allowance under section 1 of the Jobseekers Act 1995(5).

(2) In these Regulations any reference to a numbered regulation is to the regulation in these Regulations bearing that number, and any reference in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number.

Circumstances in which an allowance may be paid

3.—(1) An adoption agency, in making arrangements for a child’s adoption, may, subject to paragraph (3) and (5), pay an allowance to adopters where one or more of the circumstances referred to in paragraph (2) exist and if, having decided in terms of regulation 12 of the Adoption Agencies (Scotland) Regulations 1996 that the adoption of the child by the adopters would be in the best interests of the child, it decides after consideration of the recommendations 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) 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) 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) at the time of the placement for adoption the child is mentally or physically disabled or suffering from emotional or behavioural difficulties such that he needs special care requiring a greater expenditure of resources than would otherwise be required;
- (d) at the time of the placement for the adoption the child was mentally or physically disabled, or suffering from 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 of a deterioration in the child’s health or condition, or an increase in his age; or
- (e) 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) Notwithstanding paragraph (1) an adoption agency may, after a child has been placed by it with adopters, pay the adopters an allowance if it is satisfied that at the time of the placement one or more of the circumstances referred to in paragraph (2)(c) or paragraph (2)(d) existed.

(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

(4) S.I. 1996/3263.

(5) 1995 c. 18.

- (ii) there is any significant 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 be paid from the date of placement for adoption or from such later date as may be determined by the adoption agency and notified to the adopters.

Amount of the allowance

4.—(1) The allowance shall be of such amount as the adoption agency determines in accordance with paragraphs (2) and (3).

- (2) In determining the amount of allowance the adoption agency shall take into account—
- (a) the financial resources available to the adopters (including in respect of the child any financial benefit which would be available to them after adoption but excluding in respect of the child disability living allowance and attendance allowance payable and, where the adopters are in receipt of income support, child benefit);
 - (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) The allowance paid by the adoption agency shall not include any element of remuneration for the care of the child by the adopters and in any event may not exceed the amount of the fostering allowance (excluding any element of remuneration in that allowance) which would be payable if the child was fostered by the adopters.

Procedure in determining whether an allowance should be paid

5.—(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) to (3) of regulation 3;
- (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 in a case to which regulation 3(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 3(2)(d) applies); or
- (ii) the onset of the illness or disability (in a case to which regulation 3(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 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

6. After a decision has been made to pay an allowance, the adoption agency shall notify the adopters in writing of the following:—

- (a) the basis of the determination of entitlement to an allowance and of the assessment 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, the frequency of payment and the period of payment of the allowance;
- (e) the arrangements and procedure for review, variation and termination of the allowance under regulation 7.

Review, variation and termination of allowances

7.—(1) The adoption agency shall annually review payment of an allowance having first received from the adopters a statement setting out the adopters' address and whether the child still has a home with them (or either of them), the adopters' then current financial circumstances and the then current financial needs and resources of the child; but in any event the adoption agency shall review the payment of allowance if it learns of any material change in the circumstances of the adopters or the child, including any change of address of either.

(2) Subject to paragraph (6) where the adopters fail to supply the adoption agency with an annual statement in accordance with their agreement under regulation 3(4)(b), the adoption agency may suspend payment of an allowance until such time as a statement is supplied.

(3) 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 it has changed or ceased since the amount of the allowance was last determined.

(4) Subject to paragraph (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 a jobseeker's allowance in his own right;
- (d) the child attains the age of eighteen; or
- (e) any period agreed between the adoption agency and the adopters for the payment of the allowance expires.

(5) Notwithstanding paragraph (4)(d) the payment of an allowance may continue beyond a child attaining the age of eighteen for so long as the child continues in full time education and has not reached the age of twenty one.

(6) Where payment of allowance is suspended in terms of paragraph (2) the adoption agency may recommence payment and may pay arrears after a statement is supplied.

Confidentiality, preservation and access to records

8.—(1) Subject to regulation 24 of the Adoption Agencies (Scotland) Regulations 1996⁽⁶⁾ 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 4 and review under regulation 7 on the case records that it is required to set up under the Adoption Agencies (Scotland) Regulations 1996.

St Andrew's House,
Edinburgh
18th December 1996

James Douglas-Hamilton
Minister of State, Scottish Office

⁽⁶⁾ S.I. 1996/3266.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of adoption allowances schemes prepared by adoption agencies to pay allowances to persons who have adopted or intend to adopt a child in pursuance of arrangements made by such agencies. These new schemes are to replace the existing schemes approved by the Secretary of State under section 51(5) of the Adoption (Scotland) Act 1978 which are to be revoked on the coming into force of sections 51A (adoption allowances schemes) and 51B (transitional provisions as respects adoption allowances) of that Act as provided for in paragraph 25 of Schedule 2 to the Children (Scotland) Act 1995.