

**The Adoption Support Services and
Allowances Regulations 2008**

**CONSULTATION ON DRAFT
REGULATIONS**

The Scottish Government

Edinburgh, 2008

CONSULTATION ON DRAFT REGULATIONS

This document accompanies the draft Adoption Support Services and Allowances Regulations 2008. It sets out the policy behind the draft Regulations and seeks your comments on a number of issues within the Regulations. The consultation period runs until 1 August 2008.

There are specific questions on which we seek your views and these are highlighted in the document. However, we welcome comments on all of the proposals.

This document is primarily being distributed electronically and is available on the Scottish Government web-site at

www.scotland.gov.uk/adoptionssupportregs

If, however, you would wish to be sent the document in photocopy please contact

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or e-mail adoptionregulations@scotland.gsi.gov.uk to arrange for a copy or copies to be sent to you.

Please send your response electronically to the above address or in hard copy to

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Please complete the details on the respondent information form at the end of this document and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

BACKGROUND

The Adoption and Children (Scotland) Act 2007 ('the 2007 Act') introduced a range of reforms into the law relating to adoption of, and permanent care for, children who cannot remain with their birth families.

Once the new legislation is commenced, the existing legislation – the Adoption (Scotland) Act 1978 ('the 1978 Act') – will be repealed, except to the extent necessary to maintain the legality of those adoptions that have already been made under it. One consequence of this is that existing Regulations made under the 1978 Act will no longer be valid. For that reason new Regulations require to be put in place to restate, and amend, extend and improve, existing Regulations. In doing this account will be taken of the report from the Adoption Policy Review Group (APRG) *Adoption: Better Choices for Our Children*, which has already shaped the 2007 Act itself.

The present consultation paper deals with draft Regulations on Adoption Support Services and Allowances. This is not to prejudge whether such Regulations, when ultimately laid before the Scottish Parliament should be separate or combined with other Regulations following up the 2007 Act. Discussion with stakeholders has, however, indicated a strong preference to consult on draft Regulations in "chunks" as they become available rather than to wait until an absolutely full suite is available. The draft Regulations are at Annex A.

Regulations are intended to supplement primary legislation – in this case the 2007 Act – so they do not generally repeat provision already there. To aid full consideration, therefore, the most relevant provisions in the 2007 Act are reproduced for ease of reference at Annex B.

The full text of the 2007 Act may be found at:

http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070004_en_1

The APRG Report *Adoption: Better Choices for Our Children* may be found at:

<http://www.scotland.gov.uk/Publications/2005/06/27140607/06107>

COMMENTARY

REGULATIONS 2-3: INTRODUCTION

Interpretation

2. *In these regulations—*

“the Act” means the Adoption and Children (Scotland) Act 2007;

“adopted child” means—

- (a) a child who has been adopted or in respect of whom an applicant has given notice of their intention to adopt under section 18 of the Act; or*
- (b) a child whom an adoption agency has matched with a prospective adopter or placed for adoption;*

“adoptive parent” means—

- (a) a person who has adopted a child or has given notice of their intention to adopt under section 18 of the Act; or*
- (b) a person with whom an adoption agency has matched a child or has placed a child for adoption;*

“agency adopted child” means—

- (a) a child who has been adopted after having been placed for adoption by an adoption agency; or*
- (b) a child whom an adoption agency has matched with a prospective adopter or placed for adoption;*

“foster carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009⁽¹⁾;

“income support” means income support under Part VII of the Social Security Contributions and Benefits Act 1992⁽²⁾;

“jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995⁽³⁾;

“relative carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009;

Provision of Adoption Support Services

Adoption Support Services for persons outside the area

3.—*(1) Section 9 of the Act applies to a local authority in respect of the following persons who reside outside the authority’s area—*

- (a) an agency adopted child whom the authority has placed for adoption or who has been adopted after being placed for adoption by the authority;*
- (b) a natural parent of such a child;*
- (c) an adoptive parent of such a child; and*
- (d) a child of such an adoptive parent (whether or not adopted).*

⁽¹⁾ S.S.I. 2009/[].

⁽²⁾ 1992 c.4.

⁽³⁾ 1995 c.18.

(2) *But section 9 ceases to apply–*

- (a) *at the end of the period of three years from the date of the adoption order or when the agency adopted child attains the age of 18, whichever is sooner; or*
- (b) *at any point before the end of the period of three years from the date of the adoption order or when such a child attains the age of 18, if sooner, if the following agree–*
 - (i) *the person in paragraph (1);*
 - (ii) *the local authority in whose area that person is resident; and*
 - (iii) *the local authority which made the assessment of the needs of that person for adoption support services.*

(3) *Nothing in this regulation prevents a local authority from providing adoption support services to persons outside their area where they consider it appropriate to do so.*

Regulation 2 - Interpretation

Regulation 2 provides for definitions to be used throughout the following Regulations. Where an expression is used in these Regulations it will have the same definition as in the Act unless a separate definition is provided.

There is no definition of “natural parent” and so this will take its ordinary meaning of mother or father of the child, and will include genetic parents such as unmarried fathers.

In the English and Welsh Adoption Support Services Regulations 2005 there is provision for an agency adopted child to also mean “a child whose adoptive parent has been a local authority foster carer in relation to the child (unless the local authority oppose the adoption). We could not think of a situation where this would apply and have not made this provision in the Regulations.

- **In conjunction with the definitions used in the Act, are the definitions in this regulation sufficient?**
- **Is there a situation in which the further definition of an agency adopted child would apply, do you think that this further definition should be included in the Adoption Support Services and Allowances (Scotland) Regulations 2009?**

Regulation 3 – Adoption Support Services for persons outside the area

Regulation 3 of the draft Regulations specifies the circumstances in which a local authority will provide adoption support services to persons out with its area. These persons include:

- an agency adopted child whom the authority has placed for adoption or who has been adopted after being placed for adoption by the authority;
- a natural parent of such a child;
- an adoptive parent of such a child; and
- a child of such an adoptive family.

The responsibility to provide support for those persons lasts for a period of three years following the adoption order, at which point responsibility passes to the authority within whose area the adoptive family is resident.

This draft regulation reflects a recommendation⁴ made by the Adoption Policy Review Group report⁵ (the APRG report). Under provision in the Act alone the local authority does not necessarily have to provide such services itself.

- **Do you agree that the three year period is right?**
- **Is the general approach in Regulation 3 supported?**
- **How far should “outside the authority’s area” extend, within Scotland, the UK or wider?**
- **Should the provisions for providing support services to those residing out with the local authority area be extended to cover such other persons identified in section 1(3) of the 2007 Act, if so, which persons?**

⁴ Recommendation 6.19

⁵ Adoption: better choices for our children; published 6 June 2005

<http://www.scotland.gov.uk/Publications/2005/06/27140607/06107>

REGULATIONS 4-10: ADOPTION ALLOWANCES SCHEME

Circumstances in which adoption allowances may be paid

4.—*(1) An adoption allowance is payable under regulations 4 to 10 (adoption allowances schemes) to an adoptive parent for the purpose of supporting the placement of the adopted 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 adopted child;*
- (b) where the child needs special care which requires greater 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 adopted 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 relative carers

5.—*(1) An adoption allowance under regulations 4 to 10 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 relative carer in respect of the 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

6. *An adoption allowance under regulations 4 to 10 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

7.—(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 an 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 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 and resources 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) *legal costs, including fees payable to a court, where an adoption order is applied for in respect of an agency adopted child; or*
- (b) *expenditure for the purpose of introducing an agency adopted 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 agency adopted 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 4(2)(b) or (c) (circumstances in which adoption allowances may be paid) in relation to an agency adopted child; or*
- (b) *where they are considering including an element of remuneration under regulation 5 (remuneration for former foster carers and relative carers).*

Termination of adoption allowances

8. *An adoption allowance ceases to be payable to an adoptive parent if—*

- (a) *the child ceases to have a home with the adoptive parent;*
- (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

9.—(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 immediately—*
 - (i) *of any change of their address;*
 - (ii) *if the child dies;*
 - (iii) *if any of the changes mentioned in regulation 8 (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 provide an allowance subject to any other conditions they consider appropriate, including 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

10.—(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 9 (conditions for payment of adoption allowances);*
 - (b) *if any relevant change of circumstances or any breach of a condition mentioned in regulation 9 comes to their attention;*
 - (c) *at any stage in the implementation of the adoption support plan 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 9.

(4) If the adoption agency propose, as a result of the review, to reduce or terminate an adoption allowance or revise the adoption support plan, 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 14(3) (notice of proposal to provide adoption support services) and, if applicable, a draft of the revised adoption support plan.

(7) The adoption agency must, having regard to the review, and after considering any representations received within the period specified in the notice–

(a) decide whether to vary or terminate payment of the adoption allowance or whether to seek to recover all or part of any adoption allowance that has been paid; and

(b) where appropriate, revise the adoption support plan.

(8) The adoption agency must give the person notice of their decision including the reasons for it and, if applicable, the revised adoption support plan.

Regulation 4 – Circumstances in which adoption allowances may be payable

Regulations 4-10 concerns adoption allowances schemes. Regulation 4 sets out the circumstances in which these are payable. Regulation 4(1) allows for such allowances to be paid following the placement for adoption and/or after the adoption order is made. Certain circumstances are set out in which allowances may be paid, including:

- where this is necessary for the adoptive parent(s) to care for the child, where special care needs require unusual expenditure;
- where special arrangements are necessary because of the child's age or ethnic origin or the fact that the child is being adopted as part of a sibling group;
- where it is to met travel costs for contact between the child and a relative;
- where the adoption agency considers it appropriate to contribute towards legal cost, costs of introducing the child to the adoptive parent, or costs necessary for accommodating and maintaining the child.

The underlying philosophy is that adoptive parents would normally be expected to meet the costs usually associated with bringing up a child taking into account child benefit, tax credits etc) but allowances should be available here unusual costs are experienced.

It is not the intention of the Scottish Government to legislate for a national minimum adoption allowance. As the adoption allowance will be paid by local authorities, and the terms of the allowances are a matter for the local authorities to decide, it is felt that legislation is not the correct forum to discuss this. Guidance will be issued alongside the implementation of the 2007 Act and allowances will be raised there.

- **Is the approach suggested, to provide for allowances in circumstances where there are unusual costs, correct?**
- **Are the circumstances set out in the Regulation sufficiently comprehensive?**
- **Although the intention is not to legislate for a minimum adoption allowance, your comments on how we may approach this in guidance will be very helpful.**

Regulation 5 – Remuneration for former foster carers and kinship carers

Regulation 5 allows, exceptionally, for an element of remuneration where the adoption agency considers this necessary, prior to an adoption order is made, to allow a former foster or kinship carer, who has been in receipt of such remuneration, to adopt the child. The remuneration is restricted to a two year period after the adoption order is made unless the adoption agency considers that the needs of the child, or any other exceptional circumstance, require is continuation. This Regulation reflects part of the APRG report recommendation⁶ that financial support should be available to ensure that any carers that choose to adopt are not financially penalised.

- **Should remuneration for former foster or kinship carers be allowed?**
- **Is the period of two years correct?**

Regulation 6 – Payment of adoption allowances

Regulation 7 - Factors to be taken into account in determining the amount of an adoption allowance

Regulation 8 – Termination of adoption allowances

Regulation 6 facilitates the payment of adoption allowances periodically to meet recurring costs. The regulations also allows for where there is a one-off or less predictably recurring cost to be paid as a single payment or in instalments where the adoptive parents agree.

Regulation 7 sets out the factors that the adoption agency must take into account in determining whether to grant an adoption allowance, and at what level. These factors are:

- any other grant etc. which is available to the adoptive parent as a result of the adoption (so that if help is available to aid in any of the circumstances in Regulation 4 these are not double counted);
- the adoptive parent/family’s financial resources and needs; and
- the adopted child’s financial resources and needs

The “other grant, benefit, allowance or resource” can include any such access to remuneration which is available to the applicant as a result of the adoption. This can include benefits from the Department for Work and Pensions as well as Tax Credits and

⁶ recommendation 6.13

any such grant from local authorities that the applicants are in receipt of. We felt that creating a list of benefits and grants which may be considered may be seen as a definitive list of such grants and there would also be a need to update legislation due to any changes in benefits available. Benefits which may be considered can be outlined in guidance, however we felt that this provision was wide enough for local authorities to use their discretion whilst assessing applications.

However, Regulation 7 stipulates that these factors must not be taken into account in considering whether to provide an allowance for legal costs or costs associated with introducing the child to the adoptive parent/family. The factors may also be disregarded when considering whether to provide an allowance to meet:

- initial costs of accommodating the child in his or her new home;
- travel costs for contact between the child and a relative;
- costs of special arrangements deemed necessary because of the child's age or ethnic origin or the fact that the child is being adopted as part of a sibling group;
- remuneration for former foster or kinship carer under Regulations 5.

Regulation 8 sets out when adoption allowances cease to be payable, in essence when a child is viewed as having reached full adulthood, as shown by the child leaving home, entering full-time employment, or attaining the age of 18, unless still in full-time education or training.

- **Is the ability to pay allowances, as outlined in Regulation 6, suitable?**
- **Are the factors that must be taken into account in determining the amount of an adoption allowance correct and sufficient?**
- **Is it correct that these factors should be disregarded in certain circumstances, and are these circumstances sufficiently covered?**
- **Is it correct that adoption allowances should cease when the child reaches adulthood?**
- **Do the circumstances set out in Regulation 8 adequately capture this principle?**
- **Is the age of 18 considered an appropriate age when assessing the termination of an adoption allowance?**
- **When considering full-time education, should an age limit, such as 21, be indicated in the legislation, or is it appropriate to leave this undefined?**

Regulation 9 – Conditions for payment of adoption allowances

Regulation 10 – Review of adoption allowances payable periodically or by instalments

Regulation 9 sets out the conditions that are applicable when an allowance is paid. The conditions are that:

- the adoptive parent(s) will inform the adoption agency of key changes in circumstance;
- and will annually confirm;
 - their address,
 - that the child is still living with the adoptive parent(s),
 - their financial circumstances,
 - the financial needs and resources of the child.
- any other condition which the adoption agency may impose

Where these conditions are not met the adoption agency may suspend, terminate and partially or fully recover the allowance, except that where the condition not met is one, or all of the annual statements there must have been a prior written reminder sent more than 2 days before an action is taken.

The adoption agency must review the adoption allowances annually, on notification of any of the circumstances changing, or if the adoption agency believes it appropriate, as indicated in Regulation 10. Before any variation or termination of allowance is made, the person affected has the right to make representations and, in due course, receive notice of the final decision and the reason for it. An adoption agency may suspend adoption allowances pending his decision.

- **Are the conditions applicable to the payment of allowances appropriate?**
- **If these conditions are not met, are the possible sanctions appropriate?**
- **Are the arrangements for the periodic review of adoption allowances suitable?**
- **Is the facility to suspend adoption allowances pending a decision appropriate?**

REGULATIONS 11-13: ASSESSMENTS

Request for assessment or reassessment

11.—(1) *Where the request of a person falling within section 9(1) of the Act for an assessment relates to a particular adoption support service, or it appears to the local authority that the person's needs for adoption support services may be adequately assessed by reference to a particular adoption support service, the local authority may carry out the assessment by reference only to that particular service.*

(2) *Where a relevant member under section 49(2) of the Act requires a reassessment of their needs for adoption support services in relation to a particular adoption support service, or it appears to the local authority that the relevant member's needs for adoption support services may be adequately reassessed by reference to a particular adoption support service, the local authority may carry out the reassessment by reference only to that particular service.*

Procedure for assessment

12.—(1) *Where the local authority carry out an assessment of a person's needs for adoption support services under section 9 of the Act they must have regard to such of the following considerations as are relevant to the assessment—*

- (a) the needs of the person being assessed and how these might be met;*
- (b) the needs of the relevant family and how these might be met;*
- (c) the needs, including developmental needs, of the adopted child and how these might be met;*
- (d) the parenting capacity of the adoptive parent;*
- (e) wider family and environmental factors;*
- (f) in the case of a child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and*
- (g) any previous assessment of needs for adoption support services undertaken in relation to the person in question.*

(2) *Where the local authority carry out an assessment of a person's needs for adoption support services they must—*

- (a) where they consider it appropriate to do so, interview the person and, where the person is an adopted child, that child's adoptive parents;*
- (b) prepare a written report of the assessment;*
- (c) where they consider that the person may have a need for services from a Health Board, consult that Health Board; and*
- (d) seek advice and information from such other persons as they consider appropriate.*

Procedure for reassessment

13.—(1) *Where the local authority carry out a reassessment of the needs for adoption support services of a relevant member under section 49 of the Act they must have regard to such of the following considerations as are relevant to the reassessment—*

- (a) the needs of the relevant member being reassessed and how these might be met;*
- (b) the needs of the relevant family and how these might be met;*
- (c) the needs, including developmental needs, of the adopted child and how these might be met;*
- (d) the parenting capacity of the adoptive parent;*

- (e) wider family and environmental factors;
 - (f) in the case of a child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and
 - (g) any previous assessment or reassessment of needs for adoption support services undertaken in relation to the relevant member in question.
- (2) Where the local authority carry out a reassessment of a relevant member's needs for adoption support services they must–
- (a) where they consider it appropriate to do so, interview the relevant member and, where the relevant member is an adopted child, that child's adoptive parents;
 - (b) prepare a written report of the assessment;
 - (c) where they consider that the relevant member may have a need for services from a Health Board, consult that Health Board; and
 - (d) seek advice and information from such other persons as they consider appropriate.

Regulation 11 – Request for assessment or reassessment

Regulation 12 – Procedure for assessment

Regulation 13 – Procedure for reassessment

Regulations 11-13 introduce procedural rules for the assessment, and reassessment, for adoption support services. Regulation 11 provides that where someone wishes to have their adoption support needs assessed, or reassessed, that may, where requested or appropriate, be done in relation to a specific type of service rather than the whole range of services. It is envisaged that this should simplify matter for both the local authority and for the person whose need is being assessed. “Relevant family” and “relevant member” have the definitions indicated in the 2007 Act.

Regulation 12 set out considerations a local authority must have regard to when assessing needs for adoption support services, including:

- the needs of the person being assessed;
- the needs of the adoptive family and the adopted child; and how these needs might be met;
- the adoptive parent's parenting capacity;
- the wider family and environmental factors;
- the circumstances leading to matching or placement for adoption; and
- any previous assessment of needs

The adoption agency, where appropriate, should interview the person being assessed and, if this is an adopted child, the adoptive parent(s). The adoption agency should also consult the Health Board where the person may require health services, and to prepare a written report of the assessment.

The procedures set out in Regulation 12 should also be followed when reassessing adoption support needs.

- **Are the procedures set out in Regulations 11-13 sufficient and appropriate?**

REGULATIONS 14-16: NOTICES

Notice of proposal to provide adoption support services

14.—(1) *Before making a decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation.*

(2) *The local authority must first give the person notice of the proposed decision and the time allowed for making representations.*

(3) *The notice must contain the following information—*

- (a) *a statement as to the person's needs for adoption support services;*
- (b) *where the assessment or reassessment relates to the person's need for an adoption allowance, the basis upon which that allowance is determined;*
- (c) *whether the local authority propose to provide the person with adoption support services;*
- (d) *the services (if any) that are proposed to be provided to the person;*
- (e) *if an adoption allowance is to be paid to the person, the proposed amount that would be payable; and*
- (f) *any proposed conditions under regulation 9 (conditions for payment of adoption allowances).*

(4) *In a case where the local authority propose to provide adoption support services and are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by a draft of that plan prepared in accordance with section 45(3) of the Act.*

(5) *The local authority must not make a decision until—*

- (a) *the person has made representations to the local authority or notified the local authority that they are satisfied with the proposed decision and, where applicable, the draft plan; or*
- (b) *the period of time for making representations has expired.*

Notification of decision as to adoption support services

15.—(1) *After making their decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must give the person notice of that decision, including the reasons for it.*

(2) *Where the local authority are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by that plan.*

(3) *If the local authority decide that an adoption allowance is to be provided, notice given under paragraph (1) must include the following information—*

- (a) *the method of the determination of the amount of an adoption allowance;*
- (b) *where an adoption allowance is to be paid periodically or by instalments—*
 - (i) *the amount of an allowance;*
 - (ii) *the frequency with which the payment will be made;*
 - (iii) *the period for which an adoption allowance is to be paid; and*
 - (iv) *when the first payment of an adoption allowance is to be made.*
- (c) *where an adoption allowance is to be paid as a single payment, when the payment is to be made;*
- (d) *where an adoption allowance is to be paid subject to any conditions imposed in accordance with regulation 9 (conditions for payment of adoption allowances), those conditions, the date*

- (if any) by which the conditions are to be met and the consequences of failing to meet the conditions;*
- (e) the arrangements and procedure for review, variation and termination of adoption allowances; and*
- (f) the responsibilities of–*
- (i) the local authority under regulation 10 (review of adoption allowances payable periodically or by instalments); and*
 - (ii) the adoptive parent pursuant to any agreement mentioned in regulation 9.*

Notices to children

16.—(1) *If the person to whom notice is to be given under these Regulations is a child under the age of 12 the notice must be given to the child's adoptive parent or to the adult that the local authority consider most appropriate.*

(2) If the person to whom notice is to be given is a child aged 12 or over but, in the opinion of the local authority, that child is not of sufficient age and understanding for it to be appropriate to give that child such notice, the notice must be given to that child's adoptive parent or to the adult that the local authority consider most appropriate.

Regulation 14 – Notice of proposal to provide adoption support services

Regulation 15 – Notification of decision as to adoption support services

Regulation 14 requires that a local authority must give a person who has sought adoption support services notice of its proposed response to such a request, including whether support will be provided and if so what services will be provided. Where financial support is to be provided, its level and how it has been determined. No final decision can be taken until the person has made representations about the proposed response or the time for doing so has elapsed.

Notice of the final decision on adoption support services is set out in Regulation 15. The notice of a decision is to include the adoption support plan. Where financial support is to be provided, details of how adoption allowances have been determined and are to be paid, including method of payment, conditions, and arrangements for review, variation and termination, is to be included in the notification.

The definition of “notice” in section 119 of the 2007 Act required notices to be in writing, this definition applies to notices under regulation 15.

- **Are the procedures for notifying the person seeking adoption support sufficient?**
- **Is the information to be included in the notices and final notification satisfactory?**

Regulation 16 – Notices to children

Regulation 16 requires that, where a child is over the 12 years of age, the notice be sent direct to them. However, if the child is of insufficient age or understanding the notice

must be sent to the adoptive parent(s), or to the adult the local authority considers to be appropriate.

- **Does this regulation give adequate provision for the giving of notices under these Regulations?**
- **Should children under the age of 12 who are considered by the adoption agency to have sufficient understanding, be given notices under this regulation?**

REGULATION 17: TRANSITIONAL PROVISIONS

Transitional provision

17. Where a person was receiving, before their revocation, an adoption allowance under the Adoption Allowance (Scotland) Regulations 1996⁽⁷⁾ 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.

Regulation 17 – Transitional provision

Regulation 17 indicates that, where a person was receiving an adoption allowance under the Adoption Allowances (Scotland) Regulations 1996, that person may continue to receive the payments being made to them. Alternatively, that person may agree to receive payments in accordance with these Regulations instead.

- **Has sufficient arrangement been made for those receiving adoption allowances under the Adoption Allowance (Scotland) Regulations 1996**

⁽⁷⁾ S.I. 1996/3257.

CONSULTATION QUESTIONS

The 2007 Act introduced a range of reforms into the law relating to adoption, in line with the recommendations of the APRG report. This Act will repeal the existing legislation the Adoption (Scotland) Act 1978 and so new Regulations will be required. The Adoption Support Services and Allowances (Scotland) Regulations will be one of this set of regulations.

We would like to invite you to give us your thoughts and ideas on the Adoption Support Services and Allowances (Scotland) Regulations. Below are a few questions we hope will help form your response:

Regulations 2 and 3

- 1. In conjunction with the definitions used in the Act, are the definitions in this regulation sufficient?**
- 2. Is there a situation in which the further definition of an agency adopted child would apply, do you think that this further definition should be included in the Adoption Support Services and Allowances (Scotland) Regulations 2009?**
- 3. Do you agree that the three year period is right?**
- 4. Is the general approach in Regulation 3 supported?**
- 5. How far should “outside the authority’s area” extend, within Scotland, the UK or wider?**
- 6. Should the provisions for providing support services to those residing out with the local authority area be extended to cover such other persons identified in section 1(3) of the 2007 Act, if so, which persons?**
- 7.**

Regulations 4-10

- 8. Is the approach suggested, to provide for allowances in circumstances where there are unusual costs, correct?**
- 9. Are the circumstances set out in the Regulation sufficiently comprehensive?**
- 10. Although the intention is not to legislate for a minimum adoption allowance, your comments on how we may approach this in guidance will be very helpful.**
- 11. Should remuneration for former foster or kinship carers be allowed?**
- 12. Is the period of two years correct?**
- 13. Is the ability to pay allowances, as outlined in Regulation 6, suitable?**
- 14. Are the factors that must be taken into account in determining the amount of an adoption allowance correct and sufficient?**
- 15. Is it correct that these factors should be disregarded in certain circumstances, and are these circumstances sufficiently covered?**
- 16. Is it correct that adoption allowances should cease when the child reaches adulthood?**
- 17. Do the circumstances set out in Regulation 8 adequately capture this principle?**

18. Is the age of 18 considered an appropriate age when assessing the termination of an adoption allowance?
19. When considering full-time education, should an age limit, such as 21, be indicated in the legislation, or is it appropriate to leave this undefined?
20. Are the conditions applicable to the payment of allowances appropriate?
21. If these conditions are not met, are the possible sanctions appropriate?
22. Are the arrangements for the periodic review of adoption allowances suitable?
23. Is the facility to suspend adoption allowances pending a decision appropriate?

Regulation 11-13

24. Are the procedures set out in Regulations 11-13 sufficient and appropriate?

Regulation 14-16

25. Are the procedures for notifying the person seeking adoption support sufficient?
26. Is the information to be included in the notices and final notification satisfactory?
27. Does this regulation give adequate provision for the giving of notices under these Regulations?
28. Should children under the age of 12 who are considered by the adoption agency to have sufficient understanding, be given notices under this regulation?

Regulation 17

29. Has sufficient arrangement been made for those receiving adoption allowances under the Adoption Allowance (Scotland) Regulations 1996

2009 No.**CHILDREN AND YOUNG PERSONS****The Adoption Support Services and Allowances (Scotland)
Regulations 2009**

<i>Made</i> - - - -	2009
<i>Laid before the Scottish the Scottish Parliament</i>	2009
<i>Coming into force</i> - -	2009

ARRANGEMENT OF REGULATIONS

1. Citation and commencement
2. Interpretation
3. Adoption Support Services for persons outside the area
4. Circumstances in which adoption allowances may be paid
5. Remuneration for former foster carers and relative carers
6. Payment of adoption allowances
7. Factors to be taken into account in determining the amount of an adoption allowance
8. Termination of adoption allowances
9. Conditions for payment of adoption allowances
10. Review of adoption allowances payable periodically or by instalments
11. Request for assessment or reassessment
12. Procedure for assessment
13. Procedure for reassessment
14. Notice of proposal to provide adoption support services
15. Notification of decision as to adoption support services
16. Notices to children
17. Transitional provision

The Scottish Ministers make the following Regulations 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⁽⁸⁾ and all other powers enabling them to do so.

⁽⁸⁾ 2007 asp 4.

Citation and commencement

1. These Regulations may be cited as the Adoption Support Services Regulations 2009 and come into force on 2009.

Interpretation

2. In these regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“adopted child” means—

- (a) a child who has been adopted or in respect of whom an applicant has given notice of their intention to adopt under section 18 of the Act; or
- (b) a child whom an adoption agency has matched with a prospective adopter or placed for adoption;

“adoptive parent” means—

- (a) a person who has adopted a child or has given notice of their intention to adopt under section 18 of the Act; or
- (b) a person with whom an adoption agency has matched a child or has placed a child for adoption;

“agency adopted child” means—

- (a) a child who has been adopted after having been placed for adoption by an adoption agency; or
- (b) a child whom an adoption agency has matched with a prospective adopter or placed for adoption;

“foster carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009⁽⁹⁾;

“income support” means income support under Part VII of the Social Security Contributions and Benefits Act 1992⁽¹⁰⁾;

“jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995⁽¹¹⁾;

“relative carer” has the same meaning as in the Looked After Children (Scotland) Regulations 2009;

Provision of Adoption Support Services

Adoption Support Services for persons outside the area

3.—(1) Section 9 of the Act applies to a local authority in respect of the following persons who reside outside the authority’s area—

- (a) an agency adopted child whom the authority has placed for adoption or who has been adopted after being placed for adoption by the authority;
- (b) a natural parent of such a child;
- (c) an adoptive parent of such a child; and
- (d) a child of such an adoptive parent (whether or not adopted).

⁽⁹⁾ S.S.I. 2009/[].

⁽¹⁰⁾ 1992 c.4.

⁽¹¹⁾ 1995 c.18.

(2) But section 9 ceases to apply—

- (a) at the end of the period of three years from the date of the adoption order or when the agency adopted child attains the age of 18, whichever is sooner; or
- (b) at any point before the end of the period of three years from the date of the adoption order or when such a child attains the age of 18, if sooner, if the following agree—
 - (i) the person in paragraph (1);
 - (ii) the local authority in whose area that person is resident; and
 - (iii) the local authority which made the assessment of the needs of that person for adoption support services.

(3) Nothing in this regulation prevents a local authority from providing adoption support services to persons outside their area where they consider it appropriate to do so.

Adoption Allowances Schemes

Circumstances in which adoption allowances may be paid

4.—(1) An adoption allowance is payable under regulations 4 to 10 (adoption allowances schemes) to an adoptive parent for the purpose of supporting the placement of the adopted 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 adopted child;
- (b) where the child needs special care which requires greater 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 adopted 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 relative carers

5.—(1) An adoption allowance under regulations 4 to 10 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 relative carer in respect of the 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

6. An adoption allowance under regulations 4 to 10 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

7.—(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 an 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 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 and resources 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) legal costs, including fees payable to a court, where an adoption order is applied for in respect of an agency adopted child; or
- (b) expenditure for the purpose of introducing an agency adopted 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 agency adopted 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 4(2)(b) or (c) (circumstances in which adoption allowances may be paid) in relation to an agency adopted child; or
- (b) where they are considering including an element of remuneration under regulation 5 (remuneration for former foster carers and relative carers).

Termination of adoption allowances

- 8.** An adoption allowance ceases to be payable to an adoptive parent if—
- (a) the child ceases to have a home with the adoptive parent;
 - (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

9.—(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 immediately—
 - (i) of any change of their address;
 - (ii) if the child dies;
 - (iii) if any of the changes mentioned in regulation 8 (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 provide an allowance subject to any other conditions they consider appropriate, including 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

10.—(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 9 (conditions for payment of adoption allowances);
- (b) if any relevant change of circumstances or any breach of a condition mentioned in regulation 9 comes to their attention;
- (c) at any stage in the implementation of the adoption support plan 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 9.

(4) If the adoption agency propose, as a result of the review, to reduce or terminate an adoption allowance or revise the adoption support plan, 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 14(3) (notice of proposal to provide adoption support services) and, if applicable, a draft of the revised adoption support plan.

(7) The adoption agency must, having regard to the review, and after considering any representations received within the period specified in the notice—

- (a) decide whether to vary or terminate payment of the adoption allowance or whether to seek to recover all or part of any adoption allowance that has been paid; and
- (b) where appropriate, revise the adoption support plan.

(8) The adoption agency must give the person notice of their decision including the reasons for it and, if applicable, the revised adoption support plan.

Assessments and Notifications

Request for assessment or reassessment

11.—(1) Where the request of a person falling within section 9(1) of the Act for an assessment relates to a particular adoption support service, or it appears to the local authority that the person's needs for adoption support services may be adequately assessed by reference to a particular adoption support service, the local authority may carry out the assessment by reference only to that particular service.

(2) Where a relevant member under section 49(2) of the Act requires a reassessment of their needs for adoption support services in relation to a particular adoption support service, or it appears to the local authority that the relevant member's needs for adoption support services may be adequately reassessed by reference to a particular adoption support service, the local authority may carry out the reassessment by reference only to that particular service.

Procedure for assessment

12.—(1) Where the local authority carry out an assessment of a person's needs for adoption support services under section 9 of the Act they must have regard to such of the following considerations as are relevant to the assessment—

- (a) the needs of the person being assessed and how these might be met;
 - (b) the needs of the relevant family and how these might be met;
 - (c) the needs, including developmental needs, of the adopted child and how these might be met;
 - (d) the parenting capacity of the adoptive parent;
 - (e) wider family and environmental factors;
 - (f) in the case of a child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and
 - (g) any previous assessment of needs for adoption support services undertaken in relation to the person in question.
- (2) Where the local authority carry out an assessment of a person's needs for adoption support services they must—
- (a) where they consider it appropriate to do so, interview the person and, where the person is an adopted child, that child's adoptive parents;
 - (b) prepare a written report of the assessment;
 - (c) where they consider that the person may have a need for services from a Health Board, consult that Health Board; and
 - (d) seek advice and information from such other persons as they consider appropriate.

Procedure for reassessment

13.—(1) Where the local authority carry out a reassessment of the needs for adoption support services of a relevant member under section 49 of the Act they must have regard to such of the following considerations as are relevant to the reassessment—

- (a) the needs of the relevant member being reassessed and how these might be met;
 - (b) the needs of the relevant family and how these might be met;
 - (c) the needs, including developmental needs, of the adopted child and how these might be met;
 - (d) the parenting capacity of the adoptive parent;
 - (e) wider family and environmental factors;
 - (f) in the case of a child who is, or was, placed for adoption or matched for adoption, the circumstances that led to the child being so placed or matched; and
 - (g) any previous assessment or reassessment of needs for adoption support services undertaken in relation to the relevant member in question.
- (2) Where the local authority carry out a reassessment of a relevant member's needs for adoption support services they must—
- (a) where they consider it appropriate to do so, interview the relevant member and, where the relevant member is an adopted child, that child's adoptive parents;
 - (b) prepare a written report of the assessment;
 - (c) where they consider that the relevant member may have a need for services from a Health Board, consult that Health Board; and
 - (d) seek advice and information from such other persons as they consider appropriate.

Notice of proposal to provide adoption support services

14.—(1) Before making a decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation.

(2) The local authority must first give the person notice of the proposed decision and the time allowed for making representations.

(3) The notice must contain the following information—

- (a) a statement as to the person's needs for adoption support services;
- (b) where the assessment or reassessment relates to the person's need for an adoption allowance, the basis upon which that allowance is determined;
- (c) whether the local authority propose to provide the person with adoption support services;
- (d) the services (if any) that are proposed to be provided to the person;
- (e) if an adoption allowance is to be paid to the person, the proposed amount that would be payable; and
- (f) any proposed conditions under regulation 9 (conditions for payment of adoption allowances).

(4) In a case where the local authority propose to provide adoption support services and are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by a draft of that plan prepared in accordance with section 45(3) of the Act.

(5) The local authority must not make a decision until—

- (a) the person has made representations to the local authority or notified the local authority that they are satisfied with the proposed decision and, where applicable, the draft plan; or
- (b) the period of time for making representations has expired.

Notification of decision as to adoption support services

15.—(1) After making their decision under section 9(2) or 49(3) of the Act as to whether to provide adoption support services, the local authority must give the person notice of that decision, including the reasons for it.

(2) Where the local authority are required to prepare an adoption support plan under section 45(2) of the Act, the notice must be accompanied by that plan.

(3) If the local authority decide that an adoption allowance is to be provided, notice given under paragraph (1) must include the following information—

- (a) the method of the determination of the amount of an adoption allowance;
- (b) where an adoption allowance is to be paid periodically or by instalments—
 - (i) the amount of an allowance;
 - (ii) the frequency with which the payment will be made;
 - (iii) the period for which an adoption allowance is to be paid; and
 - (iv) when the first payment of an adoption allowance is to be made.
- (c) where an adoption allowance is to be paid as a single payment, when the payment is to be made;
- (d) where an adoption allowance is to be paid subject to any conditions imposed in accordance with regulation 9 (conditions for payment of adoption allowances), those conditions, the date (if any) by which the conditions are to be met and the consequences of failing to meet the conditions;
- (e) the arrangements and procedure for review, variation and termination of adoption allowances; and
- (f) the responsibilities of—
 - (i) the local authority under regulation 10 (review of adoption allowances payable periodically or by instalments); and

- (ii) the adoptive parent pursuant to any agreement mentioned in regulation 9.

Notices to children

16.—(1) If the person to whom notice is to be given under these Regulations is a child under the age of 12 the notice must be given to the child's adoptive parent or to the adult that the local authority consider most appropriate.

(2) If the person to whom notice is to be given is a child aged 12 or over but, in the opinion of the local authority, that child is not of sufficient age and understanding for it to be appropriate to give that child such notice, the notice must be given to that child's adoptive parent or to the adult that the local authority consider most appropriate.

Transitional provision

17. Where a person was receiving, before their revocation, an adoption allowance under the Adoption Allowance (Scotland) Regulations 1996⁽¹²⁾ 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.

[A member of the Scottish Executive]
[Authorised to sign by the Scottish Ministers]

St Andrew's House,
Edinburgh

2009

⁽¹²⁾ S.I. 1996/3257.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for local authorities to provide adoption support services as part of the adoption service maintained by them under section 1(1) of the Adoption and Children (Scotland) Act 2007 (“the Act”). The Regulations also 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.

Regulation 3 specifies the circumstances in which a local authority will provide adoption support services to persons outwith its area.

Regulations 4 to 10 concern adoption allowance schemes. Regulation 4 sets out the only circumstances in which allowances are payable to an adoptive parent. Regulation 5 provides for the limited circumstances in which an allowance may include an element of remuneration and that such remuneration can only last for more than 2 years in exceptional circumstances. Regulation 6 permits allowances to be paid periodically or by a single payment, but a single payment can be paid by instalments. Regulation 7 specifies the factors that an adoption agency must take into account, or disregard, in determining the amount of an allowance. Regulation 8 sets out the circumstances in which an allowance ceases to be payable to an adoptive parent. Regulation 9 provides that, in relation to allowances paid periodically or by instalments, the adoptive parents must agree to certain conditions before any payment is made. Where a condition is breached the allowance may be ended. Regulation 10 provides for allowances paid periodically or by instalments to be reviewed by the adoption agency annually or when there is a breach of the conditions or a change of circumstances.

Regulations 11 to 16 concern assessments of needs for adoption support services. Regulation 11 provides that an assessment or reassessment of needs for adoption support services may be conducted by a local authority by reference to one specific service rather than the whole range of potential services. Regulations 12 and 13 concern the procedure for assessments and reassessments respectively, and list the considerations that the local authority must have regard to when carrying out the assessment or reassessment. Regulation 14 provides that, following the assessment or reassessment but prior to making a decision about providing adoption support services, the local authority must give notice of the proposal to the person and allow an opportunity for representations. Regulation 15 provides that the person must receive notification and full details of the decision, while regulation 16 makes special provision to notify an appropriate adult if the person to whom notice is given under regulation 15 is a child.

Regulation 17 makes transitional provision in relation to the Adoption Allowances (Scotland) Regulations 1996 which are revoked following the repeal of the Adoption (Scotland) Act 1978.

RELEVANT EXTRACTS FROM ADOPTION & CHILDREN (SCOTLAND) ACT 2007

ADOPTION SUPPORT SERVICES

Section 9

Assessment of needs for adoption support services

(1) A local authority—

(a) must, on the request of a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, make an assessment of the needs of the person for adoption support services,

(b) may, on the request of a person mentioned in paragraph (j) of that subsection, make an assessment of the needs of the person for such services.

(2) Where a local authority makes an assessment of the needs of a person for adoption support services under subsection (1), the authority must decide whether the needs of the person call for the provision of such services.

(3) A local authority making an assessment of needs under subsection (1) must—

(a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and

(b) have regard to such matters as may be so prescribed.

Section 10

Provision of services

(1) On the request of a person mentioned in subsection (3) of section 1, a local authority must provide adoption services of a type mentioned in paragraph (d) of subsection (4) of that section to the person.

(2) On the request of a person mentioned in paragraph (a), (c) or (g) of subsection (3) of section 1, a local authority—

(a) must provide adoption services of a type mentioned in paragraphs (a) to (c) of subsection (4) of that section to the person, and

(b) may, without prejudice to subsection (4)(a), provide adoption support services to the person.

(3) For the purposes of subsection (2), it is immaterial whether the local authority has made an assessment of the needs of the person under section 9(1)(a).

(4) Where a local authority decides under section 9(2) that the provision of adoption support services is called for in respect of—

(a) a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, the authority must provide the services to the person,

(b) a person mentioned in paragraph (j) of that subsection, the authority may provide the services to the person.

Section 11

Urgent provision

(1) If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services as a matter of urgency, nothing in section 9 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for adoption support services.

(2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, adoption support services the authority must, as soon as is reasonably practicable after such provision, make an assessment of the person's needs for adoption support services.

Section 12

Power to provide payment to person entitled to adoption support service

(1) Subsection (2) applies where a local authority—

(a) has, in respect of a person, an obligation to provide, or secure the provision of, an adoption support service under this Part, or

(b) has a power so to provide and determines it should provide.

(2) Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.

(3) Those matters are—

(a) the person's eligibility for assistance from any other body,

(b) where the person is so eligible, the availability to the person of that assistance at the time when the service might have been provided to the person by the authority,

(c) the ability of the authority to provide, or secure the provision of, the service, and

(d) the person's need for the service.

(4) A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.

(5) In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance from any other body.

REGULATIONS

Section 13

Regulations

(1) The Scottish Ministers may by regulations make provision for or in connection with—

(a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—

- (i) the provision of an adoption service,
- (ii) the making of an assessment of needs under section 9(1)(a),
- (b) determining the time at which, and the circumstances in which, a local authority's duty to provide an adoption service ends,
- (c) specifying the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed,
- (d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves out with the authority's area,
- (e) specifying the persons with whom such arrangements may be made,
- (f) assessing the needs for adoption support services of persons who have moved or who intend to move—
 - (i) from one local authority area to another,
 - (ii) from out with Scotland to Scotland.
- (2) The power conferred by subsection (1) may be exercised so as to make different provision for different adoption services.

ADOPTION SUPPORT PLANS

Section 45

Adoption support plans

(1) This section applies where—

- (a) a local authority has, by virtue of section 9(1), assessed the needs of a person for adoption support services and decides that the provision of such services is called for in respect of the person, and
- (b) the person is a member of a relevant family.

(2) Subject to subsection (4), the authority must prepare an adoption support plan in respect of each member of the relevant family.

(3) An adoption support plan must, in relation to the person it concerns (“the person”)—

- (a) specify the needs of the person identified as a result of an assessment carried out by virtue of section 9(1),
- (b) record details of the adoption support services the provision of which the authority decides is called for by virtue of section 9(2),
- (c) specify any other needs of the person identified by the authority,
- (d) set out how the needs mentioned in paragraphs (a) and (c) may be met by the provision of adoption support services,
- (e) record details of any previous assessment of needs in respect of the person carried out by virtue of section 9(1),

(f) record details of any assessment of needs in respect of the person made under section 12A(1) of the Social Work (Scotland) Act 1968 (c. 49),

(g) where the person has been adopted, record details of any care plan prepared by a local authority in respect of the person under regulations made under section 17 of the 1995 Act,

(h) record details of any adoption support services which—

(i) were provided to the person before the plan was prepared, or

(ii) are being provided to the person when the plan is prepared,

(i) specify any other matter which, in the opinion of the local authority preparing the plan, is relevant to the provision of adoption support services to the person, and

(j) where there is no information to be included in the plan under any of paragraphs (a) to (i), record that fact.

(4) The authority may, with the consent of each member of the relevant family aged 12 or over, prepare a single adoption support plan in respect of all members of the relevant family instead of preparing adoption support plans in respect of each of them.

(5) Subsection (3) applies to a single adoption support plan prepared under subsection (4) as if—

(a) for the words “the person it concerns (“the person”)” there were substituted “each member of the relevant family it concerns”,

(b) for the words “the person” in paragraphs (a), (c), (e), (f), (h) and (i) there were substituted “each member”,

(c) for the words “the person” in paragraph (g), where they first occur, there were substituted “a member of the relevant family”, and

(d) for the words “the person” in that paragraph, where they second occur, there were substituted “that member”.

(6) If in the opinion of the authority a member of the relevant family aged 12 or over is incapable of giving consent under subsection (4), the requirement to obtain such consent does not apply in relation to the member.

(7) In this section, “relevant family” means—

(a) a child who is placed for adoption,

(b) the person or persons with whom a child is placed for adoption,

(c) a child who has been adopted,

(d) the person who has, or persons who have, adopted that child,

(e) any—

(i) child of a person or persons mentioned in paragraph (b) or (d),

(ii) other child who has been treated by the person or persons as a child of the person or persons, living in the same household as the person or persons.

Section 46

Duration

(1) An adoption support plan ceases to have effect on the occurrence of whichever of the events in subsection (2) first occurs.

(2) Those events are—

(a) the preparation of a further adoption support plan in respect of the member or, as the case may be, members of the relevant family in relation to whom the adoption support plan was prepared,

(b) the date on which an appropriate child reaches the age of 18.

(3) In this section, “appropriate child” means a child—

(a) who has been placed for adoption, or

(b) who has been adopted,

and who is a member of the relevant family in relation to which, or to any members of which, the adoption support plan was prepared.

Section 47

Family member’s right to require review of plan

(1) This section applies where an adoption support plan is in force in respect of a member of a relevant family or, as the case may be, a relevant family.

(2) Subject to subsection (4), the person to whom the plan relates or, as the case may be, a member of the relevant family to which the plan relates (in either case, the “relevant member”) may, if the relevant member believes the local authority is not complying with any of its obligations mentioned in the plan, require the authority to review the plan.

(3) The authority may, in reviewing the plan, carry out a reassessment of the needs of the relevant member for adoption support services.

(4) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not make a requirement under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.

(5) After reviewing the plan, the local authority must vary the plan to reflect any changes in—

(a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),

(b) the adoption support services the local authority will provide.

(6) In this section, any references to a reassessment of needs of a person include, where no assessment has been carried out by virtue of section 9(1)(a) in relation to the person, references to an assessment of needs of the person.

Section 48

Other cases where authority under duty to review plan

- (1) This section applies where an adoption support plan is in force.
- (2) The local authority must review the plan—
 - (a) from time to time, and
 - (b) at any time when the authority becomes aware of a change in the circumstances of a relevant member.
- (3) In reviewing the plan, the authority may make a reassessment of the needs of any relevant member.
- (4) After reviewing the plan, the authority must vary the plan to reflect any changes in—
 - (a) the needs of any relevant member for adoption support services identified as a result of a reassessment of needs made under subsection (3),
 - (b) the adoption support services the local authority will provide.
- (5) In this section—
 - (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,
 - (b) “relevant member” has the same meaning as in that section.

REASSESSMENT

Section 49

Reassessment of needs for adoption support services

- (1) This section applies where an adoption support plan is in force.
- (2) Any relevant member aged 12 or over may require the local authority which prepared the plan to make a reassessment of the member’s needs for adoption support services.
- (3) The authority, having regard to the results of that reassessment, must decide whether the needs of the member call for the provision of such services.
- (4) Where the authority decides, by virtue of subsection (3), that the provision of adoption support services is called for, the authority must provide the services.
- (5) Where the authority provides adoption support services under subsection (4), it must vary the adoption support plan to reflect any changes in the services the authority will provide.
- (6) A relevant member (other than the person or persons with whom the child has been placed for adoption or the person who has, or persons who have, adopted the child) may not require a reassessment to be made under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for adoption support services.
- (7) Where a local authority is making a reassessment of needs under this section, it must—
 - (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and

(b) have regard to such matters as may be so prescribed.

(8) In this section—

(a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 47,

(b) “relevant member” has the same meaning as in that section.

DIRECTIONS

Section 50

Implementation of plans: directions

(1) The Scottish Ministers may give directions of a general or specific nature to a local authority as to the implementation of adoption support plans.

(2) A direction under subsection (1) may not require an authority—

(a) to provide or, as the case may be, continue to provide, or

(b) withhold provision of,

a particular adoption support service.

(3) The Scottish Ministers may vary or revoke any direction under subsection (1).

GUIDANCE

Section 51

Guidance

(1) In preparing or reviewing adoption support plans, a local authority must have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers may vary or revoke any such guidance.

REGULATIONS

52 Regulations about reviews of adoption support plans

The Scottish Ministers may by regulations make provision for or in connection with specifying the way in which reviews of adoption support plans are to be carried out.

ADOPTION ALLOWANCES

Section 71

Adoption allowances schemes

(1) Subject to subsection (3), an adoption agency which is—

(a) a local authority must, within such period after the coming into force of this section as the Scottish Ministers may by order direct, prepare an adoption allowances scheme,

(b) a registered adoption service may prepare such a scheme.

(2) An adoption allowances scheme is a scheme for or in connection with the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made or, as the case may be, are to be made by the agency.

(3) The Scottish Ministers may by regulations make provision for or in connection with adoption allowances schemes.

(4) Regulations under subsection (3) may in particular make provision for or in connection with specifying—

(a) the procedure to be followed by an agency in determining whether a person should be paid an allowance,

(b) the circumstances in which an allowance may be paid,

(c) the factors to be taken into account in determining the amount of an allowance,

(d) the procedure for review, variation and termination of allowances,

(e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child, and

(f) the procedure to be followed by an agency in preparing, modifying or revoking an adoption allowances scheme.

RESPONDENT INFORMATION FORM: DRAFT ADOPTION SUPPORT SERVICES AND ALLOWANCES REGULATIONS 2008

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) on behalf of a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in The Scottish Government library and/or on The Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their [responses](#). Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed on the Scottish Government website-
<http://www.scotland.gov.uk/Consultations/>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.