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GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

1999--No. 24

The Adoption Allowance Regulations, 1999

Made ... ^{xxx} July 1999 , 1999
Laid before the States ... , 1999
Coming into operation on ... 1st August 1999 , 1999

THE STATES CHILDREN BOARD, in exercise of the powers conferred upon it by section 34A of the Adoption (Guernsey) Law, 1960, as amended(a), hereby orders:-

Circumstances in which an allowance may be paid.

1. (1) Without prejudice to paragraph (3), an allowance may be paid where one or more of the circumstances specified in paragraph (2) exists and the Board-

(a) is making the arrangements for the infant's adoption; and

(b) has decided-

(i) that the adoption by the adopters would be in the infant's best interests, and

(ii) after considering the recommendation of the Adoption Panel, that such adoption is not practicable without payment of an allowance.

(2) The circumstances referred to in paragraph (1) are-

(a) where the Board is satisfied that the infant has established a strong and important relationship with the adopters before the adoption order is made;

(a) Ordres en Conseil Vol. XVIII, p. 192; Vol. XXI, p. 34; Vol. XXIII, p. 238; No. VIII of 1997. Section 34A was extended to Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1997 (Ordinance No. XXI of 1997).

- (b) where it is desirable that the infant be placed with the same adopters as his brothers or sisters, or with an infant with whom he has previously shared a home;
- (c) where at the time of the placement for adoption the infant-
 - (i) is mentally or physically disabled or suffering from the effects of emotional or behavioural difficulties, and
 - (ii) needs special care which requires a greater expenditure of resources than would be required if the infant were not so disabled, or suffering from the effects of emotional or behavioural difficulties;
- (d) where at the time of the making of the adoption order the infant was mentally or physically disabled, or suffering from the effects of emotional or behavioural difficulties, and as a result at a later date he requires more care and a greater expenditure of resources than were required at the time he was placed for adoption because there is-
 - (i) a deterioration in the infant's health or condition, or
 - (ii) an increase in his age;
- (e) where at the time of the making of the adoption order it was known that there was a high risk that the infant 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; or
- (f) where at the time of the making of the adoption order the Board is satisfied that the infant should maintain contact with any person residing in another jurisdiction.

(3) An allowance may be paid by the Board where before these Regulations come into force payment was being made by the Board to the adopters in respect of an infant and the adopters have agreed to receive (instead of such payment) an allowance complying with these Regulations.

(4) In each case before an allowance is payable the Board shall require the adopters to have agreed to-

- (a) inform the Board immediately if-
 - (i) the infant no longer has his home with them (or either of them), if they have changed their address, or if the infant dies, or
 - (ii) there is any change in their financial circumstances or the financial needs or resources of the infant;
- (b) complete and return to the Board annually a letter stating any change in their financial circumstances and the financial circumstances of the infant and confirming whether or not the allowance is still needed; and
- (c) supply to the Board at least once every five years copies of their assessment notices.

(5) An allowance may not be paid from a date before the date of placement for adoption and may be paid from such later date as may be determined by the Board and notified to the adopters.

Amount of the allowance

2. (1) The allowance shall be of such amount as the Board determines in accordance with paragraphs (2) to (4).

- (2) In determining the amount of allowance the Board shall take into account-
 - (a) the financial resources available to the adopters including any financial benefit which would be available in respect of the infant when adopted;
 - (b) the amount required by the adopters in respect of their reasonable outgoings and commitments (excluding outgoings in respect of the infant); and
 - (c) the financial needs and resources of the infant.

(3) In assessing the income available to the adopters the Board shall disregard attendance allowance payable in respect of the infant and, where the adopters are in receipt of supplementary benefit, family allowance.

(4) The allowance paid by the Board shall not-

- (a) include any element of remuneration for the care of the infant by the adopters;
- (b) exceed the amount of the fostering allowance excluding any element of remuneration in that allowance which would be payable if the infant was fostered by the adopters.

Procedure in determining whether an allowance should be paid.

3. (1) Subject to paragraph (2), the Board shall, before an adoption order is made in respect of an infant whose adoption they are arranging or have arranged-

- (a) consider whether an allowance may be paid in accordance with regulation 1(1) and (2);
- (b) supply information to the adopters about allowances including the basis upon which amounts of allowances are determined;
- (c) give notice in writing in accordance with paragraph (3) 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) In a case where regulation 1(2)(d) or (e) applies, the Board shall not be required to determine the amount of allowance unless or until-

- (a) there is a deterioration in the infant's health or condition, or an increase in his age (in a case to which regulation 1(2)(d) applies), or

- (b) the onset of the illness or disability (in a case to which regulation 1(2)(e) applies),

and as a result the infant requires more care and a greater expenditure of resources than were required at the time at which he was placed for adoption.

(3) A notice under paragraph (1)(c) shall state the period of time within which the adopters may make representations to the Board concerning the proposed decision or determination and the Board shall not make a decision or determination under paragraph (1)(e) until after the expiry of that period.

Information about allowances.

4. After a decision has been made to pay an allowance, the Board shall notify the adopters in writing of the following-

- (a) the method of the determination of the amount of the allowance;
- (b) the amount of the allowance as initially determined;
- (c) the date of the first payment of the allowance;
- (d) the method of payment of the allowance and frequency with which and the period for which payment will be made;
- (e) the arrangements and procedure for review, variation and termination of the allowance;
- (f) the responsibilities of-
 - (i) the Board under regulation 5, and
 - (ii) the adopters pursuant to their agreement under regulation 1(4),

in respect of the allowance in the event of a change in circumstances of the adopters or the infant.

Review, variation and termination of allowances.

5. (1) The Board shall review an allowance-

(a) annually, on receipt of a letter from the adopters replying to the Board's inquiries as to-

(i) their financial circumstances and, in particular, whether they have changed by reason of inheritance, increased remuneration or other financial gain;

(ii) the financial needs and resources of the infant;

(iii) their address and whether the infant still has a home with them (or either of them);

(b) at least every five years, by personal interview with the adopters; and

(c) if any change in the circumstances of the adopters or the infant, including any change of address, comes to its notice.

(2) The Board 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.

(3) Where the adopters fail to supply the Board with an annual letter or copies of their assessment notices in accordance with their agreement under regulation 1(4)(b) or (c), as the case may be, the Board may deem the adopters' need for an allowance to have ceased until such time as a statement is supplied.

(4) Where payment of an allowance is suspended the Board may recommence payment if as a result of a review the Board considers that the financial circumstances of the adopters have become such that an allowance should be paid.

(5) The Board shall terminate payment of an allowance when-

(a) the infant ceases to have a home with the adopters (or either of them);

- (b) the infant ceases full-time education and commences employment or qualifies for a placement on an approved training scheme;
- (c) the infant qualifies for public assistance, supplementary benefit or unemployment benefit in his own right;
- (d) the infant attains the age of 18, unless he continues in full-time education, when it may continue until he attains the age of 21 so long as he continues in full-time education; or
- (e) any period agreed between the Board and the adopters for the payment of the allowance expires.

Confidentiality, preservation and access to records.

6. (1) Any information obtained or recommendations received or decisions made by virtue of these Regulations shall be treated by the Board as confidential.

(2) The Board shall place a record of the details of each allowance in respect of an infant including details of any determination under regulation 2 and review under regulation 5 on the case records maintained by it in respect of that infant.

Interpretation.

7. (1) In these Regulations, unless the context otherwise provides-

"adopters" means the persons who have adopted or intend to adopt an infant or, where there is only one such person, that person;

"Adoption Panel" means the panel established under section 1A of the Children Board (Regulation of Adoption Arrangements) Ordinance, 1961, as amended(b);

"assessment notice" means a notice issued by the Administrator under section 73 of the Income Tax (Guernsey) Law, 1975, as amended(c);

(b) Recueil d'Ordonnances Tome XIII, p. 20; Tome XXVI, p. 11.

(c) Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118; 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; No. IV and XXII of 1997; No. II of 1999.

"attendance allowance" means an allowance under section 1 of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, as amended(d);

"family allowance" means an allowance under section 1 of the Family Allowances (Guernsey) Law, 1950, as amended(e);

"fostering allowance" means the amount of money paid by way of maintenance for a child placed with a foster parent;

"public assistance" means a payment under the Public Assistance Law, 1937, as amended(f);

"supplementary benefit" means a supplementary benefit under the Supplementary Benefit (Guernsey) Law, 1971(g);

"unemployment benefit" means unemployment benefit under section 21 of the Social Insurance (Guernsey) Law, 1978, as amended(h);

and any other expression shall have the same meaning as in the Adoption (Guernsey) Law, 1960, as amended.

(2) The Interpretation (Guernsey) Law, 1948(i) applies to the interpretation of these Regulations as it applies to the interpretation of an enactment.

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- (d) Ordres en Conseil Vol. XXVIII, p. 353; Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993.
- (e) Ordres en Conseil Vol. XIV, p. 332; Vol. XX, p. 63; Vol. XXI, p. 34; Vol. XXII, p. 318; Vol. XXIII, p. 238; Vol. XXVI, pp. 150 and 292; Vol. XXVIII, p. 406.
- (f) Ordres en Conseil Vol. XI, p. 91; Vol. XIV, p. 363; Vol. XVI, p. 264; Vol. XVII, p. 255; Vol. XIX, p. 149; Vol. XX, p. 135; Vol. XXI, p. 34; Vol. XXII, p. 521; Vol. XXIX, p. 204; Vol. XXXII, p. 50.
- (g) Ordres en Conseil Vol. XXIII, p. 26; Vol. XXV, p. 292; Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXIV, p. 468.
- (h) Ordres en Conseil Vol. Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; No. XII of 1993; No. V of 1994; Nos. VI and XIII of 1995; No. I of 1998.
- (i) Ordres en Conseil Vol. XIII, p. 355.

Citation.

9. These Regulations may be cited as the Adoption Allowances Regulations, 1999.

Commencement.

10. These Regulations shall come into force on the 1st August, 1999.

Dated this ^{8th} day of July 1999

Ann L. Robilliard (Vice President)

J A PRITCHARD
President of the States Children Board
for and on behalf of the Board

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations are made under the Adoption (Guernsey) Law, 1960, as amended, and make provision to enable the Children Board to pay allowances to persons who have adopted or intend to adopt an infant in pursuance of arrangements made by the Board.

The Regulations make provision for the circumstances in which the Board may pay allowances (regulation 1(1) and (2)) and for existing payments to be continued (regulation 1(3)) in both cases subject to the agreement of the adopters to supply the Board with information which is required before an allowance may be paid (regulation 1(4)) and for determination of the amount of the allowance (regulation 2). They make provision for the procedure to be followed by the Board before an adoption order is made, requiring the Board, amongst other things, to supply information to, and consider representations from, adopters. They also make provision for certain information to be supplied to adopters by the Board, for the Board's responsibilities regarding review, variation and termination of allowances, after a decision to pay an allowance has been made (regulations 4 and 5) and for information and records of allowances to be placed on case records kept by the Board and to be treated as confidential (regulation 6).