

# Draft child arrangements order and residence order allowance policy

## Introduction

1. The purpose of this policy is to set out Herefordshire Borough Council's ("the local authority") approach to Child Arrangements Order Allowances. The scheme of the policy is as follows:
  - eligibility criteria;
  - the level of the allowance;
  - duties of notification by the local authority and by those in receipt of a Child Arrangements Order Allowance;
  - commencement of payment;
  - review, variation and termination of the allowance;
  - overpayments; and
  - appeals
2. A draft of this policy was the subject of a consultation exercise between [dates] and an Equality Impact Assessment was carried out on [date].
3. This policy shall be reviewed [six months after it comes into force] [on the first anniversary of its coming into force] and thereafter at the discretion of the local authority.

## Legislative Context

4. Under the Children and Families Act 2014, Residence Orders were replaced by Child Arrangements Orders. All Residence Orders are deemed to be Child Arrangements Orders for the purpose of this policy and decisions made under it.
5. Applications for child arrangements orders are usually between private individuals, under s.8 Children Act 1989. A Child Arrangements Order (Residence) is an order setting out with whom the child is to live or when the child is to live with any person. A Child Arrangements Order may also set out the details of a child's contact with specified persons. Child Arrangements Orders (Contact) do not fall within the scope of this Policy.

6. Under Schedule 1, paragraph 15, of the Children Act 1989 where a child lives, or is to live, with a person as the result of a Child Arrangements Order, a local authority may make contributions to that person towards the cost of the accommodation and maintenance of the child. These contributions are known as a Child Arrangements Order Allowance.
7. The power to make contributions does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife or civil partner of a parent of the child.

### **Eligibility Criteria**

8. Whether payments are made and the amounts of any such payments, are at the discretion of the local authority. There is no entitlement to a Child Arrangements Order Allowance.
9. A holder of a Child Arrangements Order must apply to the local authority if they wish to receive a Child Arrangements Order Allowance.
10. A Child Arrangements Order Allowance may be paid where:
  - the child is Looked After or was Looked After by the local authority immediately prior to the making of the Child Arrangements Order; and
  - the local authority supports the placement of the child with the person(s) in whose favour the Child Arrangement Order is made; or
  - the local authority is satisfied, having regard to all the circumstances, that, but for the making of a Child Arrangements Order, the child would have become Looked After by the local authority; and
  - the local authority supports the placement of the child with the person(s) in whose favour the Child Arrangements Order is made.
11. Requests for financial support from other persons (not falling within para.10 above) will be considered, but unless the Local Authority is satisfied that there are exceptional circumstances, a financial assessment, including a means test, will not be conducted and no allowance will be paid. It is not possible to specify the sort of

circumstances which might be regarded as exceptional because case by case consideration is required.

12. In all cases, the applicant must live within the United Kingdom in order to qualify for the Allowance.

### **The Allowance**

13. The Child Arrangements Order Allowance will, as a starting point:

- be set at the equivalent age related national minimum weekly allowance payable to foster carers;
- not include any reward or remuneration or fee element which may be available to a foster carer;
- will not include any additional sum in respect of birthdays, religious festivals, holidays or school uniform, all of which are expected to be provided for from the allowance and /or family resources.

14. The Child Arrangements Order Allowance is means tested. This will take into account the financial resources of the holder of the Child Arrangements Order including any financial benefit in the form of maintenance, welfare benefit payments or other forms of income or capital arising from the placement of the child. The local authority uses the Department for Education and Skills recommended standardised means test model.

15. The amount of the allowance, if awarded, will be reduced pound for pound by the amount of Child Benefit [child tax credits] and any other maintenance payments received for the child which would not be available to a foster carer.

16. In determining the level of allowance the local authority will also take into account the financial needs/resources of the child (if any) excluding mobility/attendance allowance/benefits related to disability.

17. The local authority will consider an application for one off payment under s.17 of the Children Act 1989. These are discretionary payments to be decided on a case by case basis following assessment of the needs of the child and family.

18. The level of allowance may be adjusted to include an enhanced payment where the

local authority considers that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of illness, disability, emotional or behavioural difficulties, the consequences of past abuse or neglect, or other exceptional circumstances. In considering the applicability and amount of this adjustment, the local authority will have regard to any disability related benefits or other sources of funding available to the family in respect of the child. Payments will only be made for the child after all other alternatives in terms of benefits, grants and services have been explored, and the level of the child's needs will be reviewed annually.

19. An enhanced payment may be made, exceptionally, in circumstances falling outside the scope of the criteria detailed above at the discretion of the Head of Service.

### **Notification of the decision**

20. If the local authority decides not to pay an allowance in cases where they have the discretion to do so, the local authority will write to the holder of the Child Arrangements Order setting out the decision made and the reasons for that decision.

21. Where the decision is made to pay a Child Arrangements Order Allowance the local authority will write to the holder of the Child Arrangements Order setting out:

- the amount of the allowance;
- the date of the first payment; and
- the method and frequency of payment

### **Commencement of payment**

22. The payment of a Child Arrangements Order Allowance may begin from the date of the Child Arrangements Order.

### **Notifications by those in receipt of an allowance**

23. Those in receipt of a Child Arrangements Order Allowance must promptly notify the local authority of changes in their circumstances or those of the child. In particular, the local authority must be notified if:

- the child dies;
- the child ceases to live with the holder of the Child Arrangements Order/ Residence Order;
- the Child Arrangements Order/ Residence Order is revoked; or

- there is a change of address.

24. The notification should take place promptly and in any event within 28 days of the relevant change in circumstances.

25. An applicant for, or person in receipt of, an Allowance must provide such information as is reasonably requested by the local authority to enable it to be satisfied that the Allowance should be paid/ continued. Failure to do so may result in non-payment or cessation of an Allowance.

### **Review, variation and termination**

26. Eligibility for the allowance, and the proportion payable to a particular Child Arrangement Order holder, are subject to review every year to take account of both the changing needs and circumstances of the child and family. The Model Means test will be applied annually or on receipt of notification of a change in circumstances prior to the annual review.

27. The Child Arrangements Order Allowance will be varied as the child moves into the next age band, from the date of the child's birthday.

28. The Child Arrangements Order Allowance will cease if:

- the child dies;
- the child ceases to live with the holder of the Child Arrangements Order;
- the Child Arrangements Order is revoked;
- The child ceases full time education or training and commences employment, qualifies for universal credit, income support, jobseekers allowance or employment support allowance in his own right; or
- The child becomes 18 (unless he is in full time education or training, in which case the allowance may continue until the end of the course or training he is then undertaking).

### **Overpayment**

29. If an over payment has been made the local authority will be entitled to recover the overpayment.

### **Appeal mechanism**

30. If dissatisfied with a decision as to payment or amount of allowance, the holder of the Child Arrangements Order may appeal against any decision relating to the provision of a Child Arrangements Order Allowance. **[INSERT DETAILS OF APPEAL RIGHT – E.G. IN WRITING, TO WHOM, TIME LIMIT FOR AN APPEAL]**