

**ANGUS COUNCIL****SOCIAL WORK COMMITTEE.....7 OCTOBER 1997****REPORT BY THE DIRECTOR OF SOCIAL WORK****THE SCHEME FOR THE PAYMENT OF RESIDENCE ALLOWANCES -  
CHILDREN ACT 1975 (SECTION 50) AS AMENDED BY  
CHILDREN (SCOTLAND) ACT 1995****ABSTRACT**

This report advises the Committee of the Council's responsibilities under the Children Act 1975 as amended by the Children (Scotland) Act 1995, in relation to children to whom a Residence Order applies (Section 11, Children (Scotland) Act 1995) . A Residence Order is made by the Court and is an order which regulates the arrangements regarding with whom the child is to live.

Proposals are made for the setting up and the operation of a residence allowance scheme.

**1 RECOMMENDATION**

It is recommended that the Social Work Committee:

- (i) Notes the contents of this report which outlines the Council's responsibilities under the Children Act 1975, as amended by the Children (Scotland) Act 1995;
- (ii) Approves the proposed scheme for the payment of residence allowances;
- (iii) Instructs the Director of Social Work to monitor the operation of the scheme and advise Committee of any necessary changes to the scheme as a result of ongoing monitoring.

**2 INTRODUCTION**

The Children (Scotland) Act 1995 allows relatives or a person who can claim an interest in the child to apply to the court for a Residence Order in relation to a child. A Residence Order regulates the arrangements as to where and with whom the child will live, and

replaces the repealed legislation governing custody of the child. At the time a Residence Order is granted the court can also decide to award a varying degree of parental responsibilities and rights to the person applying for the Order, for example guardianship. Any parental responsibilities and rights which have not been awarded to the person holding the Residence Order will remain vested in the parents.

The Residence Order is intended to be particularly appropriate in respect of children who are unable to be cared for by their parents, who require long term care outside their parental home, and who have developed strong ties with relatives, step parents, foster carers, or with the person who is claiming an interest.

### **3 LEGISLATIVE FRAMEWORK**

Section 11 of the Children (Scotland) Act 1995 relates to orders that may be made by the court in relation to parental responsibilities; parental rights; guardianship; or the administration of a child's property.

Applications for Orders under Section 11 can be made by a person who:

- (i) does not have, and has never had parental responsibilities or parental rights in relation to the child, but who claims an interest in the child;
- (ii) has parental responsibilities or parental rights in relation to the child;
- (iii) has had, but no longer has parental responsibilities and rights in relation to the child (unless such responsibilities and rights were lost because the child was for example adopted or made subject to a Parental Responsibilities Order in favour of a local authority.)

An order may also be made in a situation where no application has been made, but the court considers it should make such an order.

A local authority cannot make an application for parental responsibilities and/or rights under Section 11.

Section 50 of the Children Act 1975, as amended by Rule 26 (3) of Schedule 4, of the Children (Scotland) Act 1995 enables local authorities to make payments towards the maintenance of a child under the age of sixteen who is residing with and being cared for by a person other than the child's parent provided that the child is not a foster child.

#### 4. IMPLICATIONS FOR SOCIAL WORK PRACTICE

Residence is a useful addition to the range of options available for children who cannot live with their own parents, and takes its place with foster care and adoption as arrangements that can be supported by local authority allowances. This will have the effect of ensuring that the arrangements for the child's care will be influenced primarily by the needs of the child.

Prior to the implementation of the 1995 Act, Angus Council was responsible for the implementation of certain custody legislation under the 1975 Act. This included the operation of a custody allowance scheme under Section 50 of the Children Act 1975.

The custody allowance scheme only applies to those persons who applied for custody prior to 1 November 1996.

There are currently 8 families in receipt of custody allowances in respect of 9 Angus children. The level of these allowances will continue to be reviewed annually by the Angus Adoption and Permanence Panel.

The major implications for social work practice from this legislation governing Residence Orders are:

- a) the power of the local authority to make payments either on a one off basis, or as continuing maintenance payments, to persons other than parents, to enable them to care for a child for whom they have been granted a residence order and to prevent the child having to be accommodated. This would be a Residence Allowance Scheme;
- b) the acquiring of a Residence Order (including interim arrangements prior to determination by the court) by foster carers to give a child greater feelings of permanence and to facilitate a child's discharge from accommodation;
- c) the acquiring of a Residence Order (including interim arrangements prior to determination by the court) by relatives or persons claiming an interest to help prevent a child becoming looked after and provided with accommodation by the Authority or facilitate a child's discharge from accommodation.

Further, it should be noted that in all cases of the award of a Residence Order to an existing foster carer, the local authority no longer has a statutory duty to visit the family, unless the local authority retains a Parental Responsibilities Order in respect of the child. In cases where local authority supervision is no longer necessary to

protect the child's wellbeing (and this matter may be addressed by the court making a Residence Order) a saving of scarce social work resources will result.

## **5. PROPOSED RESIDENCE ALLOWANCE SCHEME**

In order to fulfil its responsibilities under Section 50 of the 1975 Act, as amended by the 1995 Act, it is appropriate for the Council to set up a scheme for the payment of allowances and to decide on the operational arrangements for such a scheme.

Decision making in respect of the awarding of a Residence Allowance should take place within the framework of the Adoption and Permanence Panel.

## **6 OPERATION OF THE SCHEME**

The overview of the operation of a Residence Allowance scheme falls within the Social Work Department's permanence service. It is proposed that the Adoption and Fostering Co-ordinator will be responsible for the day-to-day operation of the scheme, and that information about the operation of the scheme is included in the Adoption Agency annual report.

## **7 FINANCIAL IMPLICATIONS**

There are currently 9 Angus children placed with custodians, where a custody allowance has been granted. Budgetary arrangements have been made regarding the continuing payments to these children within the Social Work Department's children and young people service budget. These payments will progressively cease as children with custody arrangements reach age 16.

It is likely that a Residence Allowance will be paid in some situations where a fostering allowance or adoption allowance was previously paid.

In addition, Residence Allowance will only be paid following a financial assessment and an income maximisation assessment carried out by the Welfare Rights Team.

The level of the Residence Allowance paid will reflect the previously paid fostering allowance or adoption allowance, less the level of child benefit. Child benefit is payable on the awarding of the Residence Order but cannot be claimed by, for example, foster parents.

It is not possible to determine the likely annual cost of the Residence Allowance Scheme. However, as noted above, it is expected that there will be no additional financial implications to the Social Work Department in operating such a scheme.

## **8 CONSULTATION**

The Chief Executive, the Director of Law and Administration and the Director of Finance have been consulted in the preparation of this report.

## **9 CONCLUSION**

A Residence Order offers a positive option for ensuring permanent placements for children who are unable to be cared for by their parents on a long term basis.

The payment of Residence Allowances for relatives, step-parents, foster carers or persons claiming an interest who wish to offer a long term placement for the child, but are unable to do so for financial reasons will assist in meeting children's needs for stability and continuity of care, as well as being cost effective to the Council.

The report recommends that Angus Council approve the proposed scheme for the payment of Residence Allowances in respect of children whose carers meet the criteria for payment.

W B Robertson  
Director of Social Work

### **NOTE:-**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.



**ANGUS COUNCIL**  
**SOCIAL WORK DEPARTMENT**  
**SCHEME FOR THE PAYMENT OF RESIDENCE ALLOWANCES**

**1. Payment of Residence Allowances**

Under Section 50 of the Children Act 1975, as amended by Rule 26 (3) of Schedule 4 of the Children (Scotland) Act 1995, where a Residence Order has been made, under Section 11 of the Children (Scotland) Act 1995, in respect of a person other than a parent, a local authority may make payments to that person for or towards the maintenance of the child. The criteria for residence allowances are as follows:

- i The main purpose of residence allowances is to help prevent a child's reception into, or facilitate a child's discharge from, accommodation, or from being made subject to a supervision requirement
- ii Payments can be made either as a lump sum for specific items (eg payment of applicants' legal expenses) and/or as a periodic allowance, any other state benefit entitlement being taken into account. Application can be made before or after the Court process.
- iii Decisions on allowances are made by recommendation of the Adoption and Permanence Panel on the endorsement of the Agency Decision Maker.
- iv Periodic allowance will normally only be paid where not to do so would impose serious financial hardship on the applicant and the child. In practice, this would apply to families on low income, or where the only income comes from state benefit. Financial assessments and income maximisation assessments are to be carried out by the Welfare Rights Team. This would include application for child benefit.
- v The level of periodic allowance will normally be based on the appropriate fostering allowance, or a percentage of this, minus any state benefit (eg child benefit).
- vi A periodic allowance will not be paid for more than one year without being reviewed by the Adoption and Permanence Panel.

If there has been a change in the family's income Section 2(ii) below might then apply.

- vii Recipients of payments must sign an undertaking to advise the local authority of any change in circumstances affecting payments.
- viii **No Residence Allowance payments can be made in respect of a child of 16 years or older.**

## 2. Requests for Residence Allowance

- i The social worker must ascertain whether the family's circumstances are covered by 1(i) and 1(iv) above.
- ii If not, he or she must advise the applicant -
  - a that although the local authority is empowered to make payments to relatives, foster parents, step-parents, or those persons claiming an interest it does not have a duty to do so.
  - b that they may have an obligation to aliment the child under Section 1 (1) (d) of the Family Law (Scotland) Act 1985 if they have accepted the child as a child of their family (this does not apply to placements with foster carers however.
  - c that parents continue, to have an obligation to aliment the child under Section 1 (1) (c) of the 1985 Act and that a Court may make an order for aliment to be paid (Section 3 of the 1985 Act).
- iii A report, including a statement of the applicant's financial circumstances must be submitted to the Adoption and Permanence Panel for their consideration. Before completing this a benefits check must be completed to maximise income. This must be formulated through the Welfare Rights Team.

## 3. Effect of a Section 11 Residence Order

A Section 11 Residence Order ends the Social Work Department's interest in a child (except in relation to the review of residence allowances as appropriate) unless the Local Authority has a Parental Responsibilities Order.

It is likely that after reviewing the child's case the Social Work Department would seek a discharge of a Parental Responsibilities Order where a Residence Order is made.