

# Consultation on Funeral Expense Assistance Regulations

May 2018

## Ministerial Foreword



Arranging a funeral is something that many of us have little experience of but something we know is important as a mark of love and respect for the person who has died. Making decisions can be difficult. But if finding the money to pay for the funeral is a problem, then making arrangements can be even more challenging. That means it's really important that the support we provide to people who are struggling with funeral costs is easy to understand and access, and not something that makes the process of arranging a funeral even harder.

We have heard time and time again that the UK Government's Funeral Expenses Payment fails bereaved families in a number of ways. The Scottish Government is determined to make this support better when our Funeral Expense Assistance (FEA) replaces the Department for Work and Pensions (DWP) payment in Summer 2019, as one of eleven benefits being devolved to Scotland.

Delivery of FEA is central to our wider policy on funeral poverty, as set out in our [Funeral Costs Plan](#)<sup>i</sup>. The plan includes 10 actions that the Scottish Government will take across a range of areas to help tackle funeral poverty and make affordable funeral options available.

We have already announced a number of improvements we will incorporate in our FEA based on the significant level of engagement we have had with people with experience of the current DWP payment. We have listened to concerns about the impact of long processing times and have made a commitment to process applications within ten working days of receipt of a completed application; and make payments as soon as practicable thereafter.

We have widened eligibility so that around 2,000 additional people each year, who would receive nothing under the present system, will receive support. I am also pleased to have been able to commit to increasing the flat rate part of the payment each year to take account of the impact of inflation. This will ensure that the value of FEA is maintained. I would strongly urge the UK Government to make similar commitments so that bereaved families in the rest of the UK can also benefit from this improved support.

In December 2017 we published a set of [illustrative regulations](#)<sup>ii</sup> for FEA to show how we intend to use our powers. The feedback we received has been used to develop the draft regulations.

The Social Security (Scotland) Bill completed its Parliamentary process on 25 April 2018, marking a key step in our journey to deliver social security in Scotland, including FEA. We are now looking for your views through this consultation to inform our final policy for FEA. I encourage you to respond to the consultation, and thank you in advance for taking the time to give us your views.

**Jeane Freeman MSP,  
Minister for Social Security**

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## SECTION 1 – INTRODUCTION

The Scotland Act 2016 devolved new social security powers to Scotland. This included competence for the Funeral Expenses Payment (more commonly known as the Funeral Payment). Scottish Ministers will use powers in the Social Security (Scotland) Bill 2018 to create a new benefit (to replace the DWP Funeral Payment in Scotland) called Funeral Expense Assistance (FEA), which will be delivered by Summer 2019.

### How has the Scottish Government developed the FEA benefit?

The Scottish Government believes that understanding and learning from the experiences of individuals and organisations that come into contact with the current benefits system is vital to help us develop FEA. Particularly to help us think about issues which have an impact on dignity, respect and fairness.

So far, we have gathered views in a number of ways including:

- From the [FEA Reference Group](#)<sup>iii</sup> which was established in March 2016. The group has met nine times to help gather evidence, bring a variety of informed perspectives and provide feedback on proposals;
- Through the [Social Security in Scotland Consultation](#)<sup>iv</sup> which ran from July to October 2016. The section on FEA received 156 responses from both organisations and individuals;
- During three roundtable meetings and the National Conference on Funeral Poverty in 2016;
- From Experience Panel members; and
- By meeting individual organisations to discuss specific areas and interests.

Building on what we have heard through this engagement work, we then set out how we intend to use our powers to deliver FEA in [illustrative regulations](#)<sup>v</sup> that were issued to the Social Security Committee, and the Delegated Powers and Law Reform Committee, of the Scottish Parliament in December 2017. These were also shared, with a request for feedback, with the FEA Reference Group and through the Social Security Newsletter.

Given the extent of the engagement throughout the development of the FEA policy and regulations so far we do not anticipate that this consultation will result in major changes to the value of payments or eligibility. However, any proposed changes that have a significant impact on financial planning would need careful consideration.

### How does FEA fit into the wider Scottish social security system?

As we have been developing the law that will underpin how social security will be delivered in Scotland, we have provided a series of position papers to the Scottish Parliament's Social Security Committee setting out current policy thinking on key matters, including the Security Charter and independent scrutiny, Social Security Principles and a rights based approach, Social Security Fraud and Offence Provisions, Social Security ICT implementation, Social Security Agency implementation, Re-determinations and Appeals, Disability Assistance and Employment-Injury Assistance, and Support for Carers. You can find information on the [Scottish Parliament website](#)<sup>vi</sup>.

## SECTION 2 – ABOUT THE CONSULTATION

### What are we consulting about?

This consultation asks questions about whether the draft FEA regulations, at **Annex A**, will have the desired effect and also asks questions on some specific points about the effects of these regulations. We would like to gather views from a range of organisations and individuals to ensure we have identified the best solution.

### Who do we want to hear from?

We are keen to gather the views of people with a working knowledge of social security and experience of working with regulations, for example welfare rights officers and local authorities. As the Scottish Commission on Social Security, which will be set up to scrutinise future regulations, will not be in place in time to participate in the consultation process, we plan to engage experts in social security legislation to provide effective scrutiny of the draft regulations.

In addition, we are keen to hear from individuals and stakeholder groups with an interest or experience in this area. This includes previous applicants, funeral directors and people who provide support to those who have been bereaved.

### How can you respond?

In order to make this consultation as accessible as possible for people who might be affected by the changes, we are offering alternative ways of engaging for past, current and potential applicants. We think that questions 4 to 9 (in **Annex B**) will be particularly relevant to the people who will apply for FEA. To respond to the consultation, people will be able to choose between interviews (for example, face-to-face or over the phone), group sessions, and the opportunity to provide written feedback in the form of a questionnaire. This will provide people with the opportunity to speak directly to researchers about their experiences and views on topics covered in the wider consultation.

We have already proactively invited Social Security Experience Panel members to participate in research on this topic, as well as working with a range of stakeholders, and other relevant agencies, to hear about their experience and views on key issues covered in this consultation. If you would like to tell us about your experiences and views, please contact [socialsecurityexperience@gov.scot](mailto:socialsecurityexperience@gov.scot) or:

**Freephone:** 0800 029 4974 (includes language line translation)

**Text:** Prefix 18001

**SMS:** 07467 447375

British Sign Language (BSL) users can contact us via <http://contactscotland-bsl.org>.

Please let us know about any additional support needs that you have in order to enable you to take part.

## **When do you have until to respond?**

All responses should be submitted to us by **23 August 2018**. More information, on how to respond can be found at **Annex B**.

## **Who might be affected by the regulations?**

Under proposed eligibility, FEA will reach around 2,000 additional people each year compared to the current DWP Funeral Payment. This will take the total number of payments to approximately 5,600 each year, once a steady state is reached, and annual expenditure to around £8 million.

We want to target FEA at those who are in poverty and those who may be tipped into poverty by having to pay for a funeral. To do this, eligibility will be dependent on the applicant (or their partner) being in receipt of specified UK Government benefits or tax credits.

Further details of who may be affected by the regulations can be found in the summary of draft Impact Assessments at **section 7**. We are also consulting on these and welcome your views.

## **How will the regulations be taken forward?**

The responses to the consultation will be analysed and considered before final policy decisions are made. The regulations will then be revised as needed and laid in draft for approval by the Scottish Parliament. They will then need to complete the parliamentary process before FEA payments can begin to be made.

Whilst the regulations are being developed, work is also underway on the design of the new Social Security Scotland. This will be headquartered in Dundee, will have a further site of similar size in Glasgow and a strong local presence with a human face to improve accessibility and support. The Agency's local presence will also ensure that at least 400 jobs are spread across Scotland. The aim is to recruit a diverse workforce that represents our society and the people who will use our service.

Later this year we will start to design the business processes which will allow citizens to access and receive the FEA. This includes the application process. We want to test and evolve designs with stakeholders and members of the public who have experience of the current DWP system to ensure it is as user-friendly as possible.

## **SECTION 3 – POLICY OBJECTIVES**

The Scottish Government recognises the impact of rising funeral costs on families on low incomes; the long term effect this can have on their finances; and on how they experience grief.

We have already set out a range of actions that we will take to tackle funeral poverty during this parliamentary term in the [Funeral Costs Plan<sup>vii</sup>](#) which was published in August 2017. As well as improving the availability of affordable funeral options, the Scottish Government wants to provide support directly to those who need it most at the point of bereavement. A key way we will do this is by delivering FEA by summer 2019.

FEA will provide a one-off payment to support people on certain benefits or tax credits by providing a contribution towards the cost of a funeral. FEA is intended to help improve the outcomes for bereaved families or friends by reducing the burden of debt they may face when paying for a funeral.

The Scottish Government wants to ensure that the process to determine eligibility and provide support is handled as sensitively as possible. We also want to reach more people with the benefit, improve the application process and make eligibility clearer to people in advance of application. We have already committed to processing completed FEA applications within ten working days, responding to feedback that the current DWP process takes too long to reach a decision.

Prior to launch, we will develop clear communications to ensure that applicants and the services that they come in to contact with and might seek support from, are aware of the new benefit; the eligibility criteria; and how to apply for it.

## **GENERAL QUESTIONS ON THE REGULATIONS**

It would be helpful if you could bear these general questions in mind when reading the consultation paper.

- 1. Do you think that the draft regulations (Annex A) are likely to meet the policy intent set out in this document?**  
**Yes / No**  
**If no, please explain:**
  
- 2. Can you identify any potential unintended consequences of the regulations?**  
**Yes/No**  
**If yes, please explain:**
  
- 3. Can you identify any gaps in the regulations?**  
**Yes/No**  
**If yes, please explain:**

## SECTION 4 – OUTLINE OF REGULATIONS

### What is in the FEA regulations?

The FEA regulations will contain all relevant provisions for the benefit, including those for issues such as residence requirements; and how someone can ask for their claim to be looked at again.

## SECTION 5 - FEA REGULATIONS

### ELIGIBILITY

Eligibility for FEA will be determined when a completed application is received by Social Security Scotland and will look at:

- **Applications:** whether the application is made in the format required and during the permitted application window.
- **Relationship to the person who has died and financial responsibility for the funeral:** to be eligible, the person applying for FEA must be responsible for paying for the funeral, and is usually the nearest relative or friend of the person who has died.
- **Residence:** applicant needs to be habitually resident in Scotland, and the deceased needs to have been ordinarily resident within the UK.
- **Qualifying benefit:** the applicant or their partner needs to be in receipt of a qualifying benefit or tax credit.

The sections below give more detail on each of these:

### Applications

The aim is to make it as easy as possible for people who are entitled to FEA to take up their entitlement, so there will be a number of ways to apply for FEA. Information on how to apply for devolved benefits will be publicised widely.

The application window for FEA opens on the date of death of the person whose funeral is being arranged and closes six months after the date of the funeral. An FEA application can be made at any point during this window. Consideration was given to whether having flexibility to accept applications outside this window would be helpful in exceptional circumstances. While this may allow more people to apply, it would add a subjective, and potentially inconsistent element to decision making, which is at odds with an entitlements based system. On balance, the Scottish Government has decided that it is better to have a clearly defined application window.

In the event of an individual applying because they are expecting to have responsibility for a funeral but the person has not yet died, the applicant would be informed of the application process and evidence required. Applications submitted for a funeral where the person has not yet died would not be valid, as circumstances and eligibility may change prior to the application window commencing.



**Timescale to make a determination:** The Scottish Government has committed to processing FEA applications in ten working days and making payment as soon as practicable thereafter. This is significantly faster than the current DWP processing time and responds to concerns we have had that it takes too long to make decisions at present, increasing the uncertainty and stress for applicants.

**Date of Application:** Applications will be assessed based on the eligibility of the applicant on a single day. The application is treated as being made on the day it is received by Social Security Scotland.

**Valid Application:** There will be certain conditions that need to be met to determine that a valid claim has been made. Relevant processes for this and for situations where the form does not meet the requirements, will be set out in guidance once we have further developed the process to deliver our services.

**Evidence:** Evidence requirements and processes to check whether applicants meet eligibility conditions are under development. This includes opportunities for using existing data sources, including gathering data from DWP and HM Revenue & Customs (HMRC). Social Security Scotland's evidence requirements will be kept to a minimum and will be clearly specified.

**Policy development so far:** Initially the Social Security Bill specified that only one application could be made by an individual for FEA. Due to the length of the FEA application window, an individual's eligibility may change depending on when they apply. We understand that not everyone who is entitled to be on a qualifying benefit or tax credit may be in receipt of one at the point they apply for support. Also, people may not become eligible for a benefit until after someone has died and this leads to a change in their financial circumstances.

**What we will do to improve things:** In recognition that an individual's circumstances can change during the application window, the Social Security (Scotland) Bill 2018 was amended at Stage 2 of the Bill process to allow repeat applications from the same individual for the same life event. Once we have further developed the process to deliver our services, there may be some further provision in regulations and operating practice in this area to smooth the application process for applicants and increase efficiency. For example, it may be possible to make exceptions for the situation where a backdated award of a qualifying benefit has been made after the date of the FEA application window has passed.

#### **4. Is the application window for FEA clear?**

**Yes / No**

**If no, please explain:**

## Relationship to the deceased

Eligibility for FEA will, in part, depend on the familial relationship or friendship that the applicant had with the person who has died.

**Policy development so far:** We understand the current DWP system asks questions that are intrusive and distressing. The questions also extend the length of the Funeral Payment application form, and ask about things where applicants may not have access to the information required, such as the financial status of other family members. For example, if there is another immediate family member not on a qualifying benefit then the DWP would seek further information from the applicant about that family member. This would not only delay a decision being made while the applicant gathers further evidence from other family members, but is also likely to mean that the applicant would not be eligible to receive the payment as the DWP would conclude that there is another person who could take financial responsibility for the funeral.

**What we will do to improve things:** The Scottish Government has been looking at ways to make this process less intrusive, to avoid having to make judgements about family relationships, and to make it clearer in advance who is entitled to FEA. The Scottish Government has responded to feedback from stakeholders and has decided to use the family hierarchy lists from the Burial and Cremation (Scotland) Act 2016 (2016 Act) as part of the process to determine eligibility for FEA. The lists are as follows:

### Adult death:

### Child death:

the adult's spouse or civil partner,	the child's parent or a person who had parental rights and parental responsibilities in relation to the child (but who is not a local authority),
neither married to nor in a civil partnership with the adult but was living with the adult as if they were married to each other and had been so living for a period of at least 6 months (or if the adult was in hospital immediately before death had been so living for such period when the adult was admitted to hospital),	the child's brother or sister,
the adult's child,	the child's grandparent,
the adult's parent,	the child's uncle or aunt,
the adult's brother or sister,	the child's cousin,
the adult's grandparent,	the child's niece or nephew,
the adult's grandchild,	a friend of long standing of the child.
the adult's uncle or aunt,	
the adult's cousin,	
the adult's niece or nephew,	
a friend of long standing of the adult.	

In addition to using the family relationship lists, a key difference from the current DWP Funeral Payment process is that if there was another family member at the same level of the list as the applicant such as another sibling, and nobody at a higher level of the hierarchy, we will not ask the applicant questions about the other person's circumstances

in order to consider whether the other family member should take financial responsibility for the funeral. Instead we will accept that the applicant is an appropriate person to take financial responsibility for the funeral.

In exceptional circumstances, such as where there has been estrangement, or there are relevant circumstances the applicant raises in their application, Social Security Scotland will consider whether it is reasonable for the applicant to be the person making funeral arrangements.

Our forecast suggests that making these changes will significantly widen eligibility for FEA, with an estimated additional 2,000 FEA payments being made each year. This will extend FEA support to more people on low incomes, taking the total number of payments to approximately 5,600 per annum, once a steady state is reached. In addition to the £5.3 million we will receive from the block grant transfer from the UK Government, the Scottish Government is investing a further £3 million annually to fund this widened eligibility.

- 5. We have proposed that the applicant must usually have the nearest relationship to the person who has died, and in exceptional family circumstances, such as estrangement, that they explain to Social Security Scotland why they should be considered to be the appropriate person who will take financial responsibility for the funeral.**

**Do you agree with this approach?**

**Yes / No**

**If no, please explain:**

## Residence

There are two residency considerations for FEA:

- **Residency of Applicant:** an FEA applicant must be habitually resident in Scotland.
- **Residency of Person who has died:** the deceased person must have been ordinarily resident in the UK.

The position adopted in relation to the residency of the applicant and of the person who has died is consistent with the current UK system. This is important and mitigates the risk of double claiming and / or gaps in entitlement. It will prevent people who happen to be in Scotland on a particular day or for a short period from being entitled to benefits (for example, if they have a second home or are on a long holiday). Since a person can only be habitually resident in one place at a time, it prevents applicants from qualifying for assistance from multiple jurisdictions.

**Habitual residence:** Broadly, this would mean that to be eligible an applicant's main home must be in Scotland and their intention is to continue living there. They must also be entitled to be living in Scotland. In practice, the residence conditions attached to each of the qualifying benefits or tax credits may be sufficient to establish Scottish residence. This, combined with the Scottish Government's shared work with DWP to make the systems as seamless as possible, means that we do not anticipate a significant evidence burden on applicants, especially where they are coming to Scotland from other Common Travel Area (CTA) jurisdictions, in line with the reciprocal and pragmatic approach that is currently taken. Habitual residence is an established legal concept and is consistent with the eligibility conditions used in the UK system, throughout the CTA and in many member states of the European Union. Using habitual residence for FEA applicants therefore brings a number of advantages.

**Ordinary residence:** The other main concept of residence is ordinary residence. This is very similar to habitual residence in that it requires a person to be living in a jurisdiction and to have an intent to remain there. The key difference is that ordinary residence can be established even where the intent to remain is for a short or temporary purpose, meaning that a person could be ordinarily resident in one jurisdiction but habitually resident in another. While ordinary residence may be easier to administer, it is a less robust concept that may confer eligibility on applicants with relatively weak or temporary associations with Scotland. Its inconsistency with the approach taken in relation to the majority of UK assistance potentially also creates scope for administrative problems, including double claiming. However, while we do not consider that ordinary residence is a suitable test for FEA applicants, we consider that it is suitable for use for the residence of the person who has died, as it is not overly burdensome for the applicant to provide evidence on and is consistent with the UK Government position.

**Policy development so far:** Concerns about the definition of being habitually resident in Scotland, and how Social Security Scotland will implement that definition of residency in practice, have been raised. This includes how residency will be defined at a UK and EU level. For example, where individuals live in Scotland and work in England; and EU nationals living in Scotland. Situations where people may have moved to provide care for a family member who has then died have also been suggested as a type of complex residency case that might occur.

**What we will do to improve things:** We would welcome engagement with organisations and individuals on this issue and expect to consider the treatment of complex residency cases further as we progress the development processes to deliver our FEA service and as we develop guidance for Social Security Scotland's decision makers.

- 6. We have proposed that applicants must be habitually resident in Scotland, and the person who has died must be ordinarily resident in the UK to qualify.**

**Do you agree with this approach?**

**Yes/No**

**If no, please explain:**

### **Location of Funeral**

FEA will provide support for funerals that take place in the United Kingdom, or, in certain cases, in a member state of the EU, Iceland, Liechtenstein, Norway or Switzerland. The funeral may take place outside the UK where the applicant or their partner is resident in Scotland and is exercising particular freedom of movement rights, as set out in the draft regulations.

**Policy development so far:** It has been suggested that we should carefully consider the wording of the location of the funeral section, as this is a complex area.

**What we will do to improve things:** We have reviewed the wording of this section of the regulations and are confident it is consistent with current provision for the location of the funeral.

## Qualifying Benefits

Rather than creating a potentially complex new means-testing system, FEA payments will be made to applicants where either they or their partner have been awarded:

- Income Support (IS)
- Income based Job Seekers Allowance (JSA)
- Income related Employment and Support Allowance (ESA)
- Pension Credit (PC)
- Child Tax Credit (CTC)
- Disability or severe disability element of Working Tax Credit
- Universal Credit (UC)
- Housing Benefit (HB)

This is expected to target FEA payments at people at the lower end of the income spectrum. This is consistent with the qualifying benefits and tax credits under the current system.

## Support for Mortgage Interest

**Policy development so far:** The DWP recently added receipt of Support for Mortgage Interest (SMI) only to its qualifying criteria for the Funeral Payment. It is not yet clear the number of people in Scotland who might qualify through this route alone.

**What we will do to improve things:** We are currently working with DWP to understand the scale of this change for eligibility in Scotland and how we might be able to design a system that would work to process applications from this group. We will progress this work over the summer before reaching a decision on whether to include receipt of SMI only in eligibility for FEA.

## Widening eligibility to include other groups

**Policy development so far:** Other ways to widen eligibility for FEA have been considered, including receipt of Maternity Allowance, including pre-24 week pregnancy loss and people who are students. This would significantly increase the number of people who would be eligible for FEA.

**What we will do to improve things:** We have already widened FEA eligibility and expect to help an additional 2,000 people each year who would receive no support at present from DWP, as mentioned at page 10. Widening eligibility further to add these three additional groups has been analysed. However, we have concluded that the additional complexities, risks, and costs of widening eligibility outweigh the benefits of including these groups. We would also expect that if some of these changes were made, it would reduce the targeting of the benefit at those on low incomes. The Scottish Government has therefore decided not to widen eligibility for FEA to Maternity Allowance, pre-24 week pregnancy loss, and students.

## **Treatment of Universal Credit (UC) fluctuating entitlement**

The monthly variations in UC payment calculation and entitlement may mean that it is not clear to the applicant whether they are in receipt of UC at the time they apply for the FEA. We therefore plan to extend the eligibility test over two months. Due to the way that UC is administered, around 6% of the caseload at any one time has an award of £0 because their earnings are too high to receive a payment. Scottish Ministers are minded to provide that people with a £0 award of UC should not receive a FEA.

- 7. We propose that qualification by being in receipt of UC should be an award of more than £0 in the month before or the month in which the application is made.**

**Do you agree with this approach?**

**Yes / No**

**If no please explain:**

- 8. Is the qualifying benefit / tax credit eligibility clear?**

**Yes / No**

**If no please explain:**

## ASSISTANCE TO BE GIVEN

### Payment

The FEA payment is made up of two elements, as set out below. We are reviewing if there is a clearer and more transparent way to communicate how this payment is calculated, to help people understand what support is available. This may include presenting the additional travel costs under the first element separately.

**1) Burial or Cremation costs.** This will be available to all eligible applicants, and may include costs of burial or cremation. It may also include the cost of any documents that are required to allow the burial and cremation to take place (such as a doctor's certificate). Some other costs may also be included in this element of the payment. This would include, for example, certain travel costs;

and

**2) A flat rate payment, as a contribution for other expenses.** This may be used towards any other funeral expenses such as funeral director fees, a coffin, and flowers. The amount of other expenses will either be –

- £700 for the majority of eligible applicants where the deceased had no funeral provision in place; **or**
- £120 to eligible applicants where the deceased had made provision for their funeral through a funeral plan.

The higher payment will apply in all cases where the person who has died was under 16 years.

### Increasing the flat rate payment

**Policy development so far:** The £700 maximum currently paid by the DWP has been frozen since 2003. We understand there is a desire to increase this amount.

**What we will do to improve things:** The Scottish Government has committed to an annual uprating of the flat rate element. This will ensure that the value of this part of the payment will be protected from the impact of inflation. This commitment means that people in Scotland will receive a higher payment for other expenses than in the rest of the UK, in addition to more people being entitled to support. The costs of this additional support will be met from the Scottish Government's budget.

### Removing the lower flat rate

**Policy development so far:** We have considered removing the £120 flat rate so all applicants are entitled to the upper payment.

**What we will do to improve things:** Removing this rate would mean that some applicants would receive the full £700 in addition to having almost all funeral costs paid for by a funeral plan. These applicants would be in a better position than applicants where the deceased had made provision for the funeral in ways other than a funeral plan (for example a bank savings account) as these savings would be deducted from the payment amount. This would create an unfairness in the system and so the Scottish Government has decided not to remove the lower flat rate.



## Transport costs

The element of the current DWP Funeral Payment that pays for burial or cremation costs also includes some other costs, including transport in certain circumstances. Transport costs out with these specified circumstances fall under the other expenses (or flat rate) element of the payment.

**Policy development so far:** Entitlement to transport costs is complex and there is a lack of data about how it operates at present. The Scottish Government has considered options to simplify this policy, including moving to paying a flat rate for mileage over 50 miles.

**What we will do to improve things:** Given the lack of data on transport costs paid at present from DWP, the Scottish Government has decided not to alter the current policy on transport costs as it is unclear what the impact of this would be on individuals, including people living in rural areas who might be more likely to be affected. Instead, the Scottish Government will improve communications about what applicants are entitled to and will streamline application process where possible.

## Payments to funeral directors

We understand that currently, in the majority of cases, the DWP makes payments directly to the funeral director on behalf of the applicant. However, the applicant can specifically request the payment be made to them (the applicant) if they wish, for example if they have already paid the bill.

**Policy development so far:** We understand this process provides the funeral director with reassurance about receiving payment for their services if the applicant is successful. It can also make it easier for bereaved families to manage their finances, and may help prevent financial abuse. However, this process may not always be clear to the applicant in terms of what is happening and why.

**What we will do to improve things:** The Scottish Government proposes to continue with the principle that the payment should be made to the funeral director where there is a bill outstanding, and make payment to the applicant where the bill has been paid. In addition, we plan to make this process more transparent for the applicant, ensuring they understand the decisions made, agree to how the payment is to be made, and are aware of the next steps throughout the process. We expect to progress and test the understanding of this process with users through the development of the FEA application process.

- 9. We have proposed to continue with the presumption that where there is a bill outstanding and the applicant consents, the payment will be made directly to the funeral director. Where the bill has already been paid, the payment will be made to the applicant.**

**Do you agree with a this approach?**

**Yes / No**

**If no, please explain:**

## DEDUCTIONS

The DWP changed its policy in April 2018 so that deductions will no longer be made where the person paying for the funeral receives help with these costs from friends, family or charities.

Having asked a number of questions about deductions in our consultation on Social Security in Scotland in 2016, we had already made clear that the Scottish Government would not make deductions where contributions are made by friends and family. We, therefore, welcome the recent changes made by the DWP.

**Policy development so far:** Deductions are currently made for funerals of children where the child had assets in their own name, such as a child trust fund.

**What we will do to improve things:** The Scottish Government understands the particularly difficult circumstances faced by a family arranging a funeral for a child. We will no longer make deductions where the child had an estate, such as a child trust fund. We will not reduce the flat rate element from £700 for the funeral of a child. We are discussing child funeral charges with local authorities, funeral directors and private crematoriums to see what else might be possible to help in this area.

**10. We have proposed not to make deductions from the payment award where there are assets in the name of the child who has died.**

**Do you agree with a this approach?**

**Yes / No**

**If no, please explain:**

## **SECTION 6 - REQUEST FOR A RE-DETERMINATION**

Re-determination provides the right for an individual to ask for a determination to be taken again, should they wish. The focus of the re-determinations approach is on getting the decision right, to have clearly published procedures and timescales for challenging decisions, with meaningful redress, and to have processes in place for Social Security Scotland to put things right quickly where there has been an error.

Unlike the DWP's Mandatory Reconsideration process that only examines whether the original decision was right or not, Social Security Scotland will put aside the original determination and a different, independent officer will undertake the full process of making a new determination, which will replace the earlier determination completely. The individual will be able to ask for a re-determination without having to supply further evidence, but Social Security Scotland will take into consideration any new evidence provided. If the individual is dissatisfied with the re-determination outcome, or if it has not been completed within the prescribed timescales, then the individual can exercise their right to appeal to the First-tier Tribunal.

We are designing a re-determinations and appeals process which is informed by individuals' experiences, including their previous experience of the current, DWP process. The Scottish Government is working closely with Scottish Courts and Tribunal Services in co-designing the appeals process to ensure the individual is at the centre of the process. As a result of the amendments made to the Bill at Stage 3, the Scottish Government will report annually on how the appeals process is working.

### **Timescales for the re-determination process**

Our proposal is that a re-determination request relating to FEA should be made within 31 calendar days of an individual being notified of the determination.

If a request is not made within the 31 days allowed, a request for a re-determination can still be considered at any point up to a year after being notified of the original determination if there is a good reason for the request being made late. Where Scottish Ministers refuse a late request for a re-determination, the individual will be able to appeal that to the First-tier Tribunal.

We propose that, on receipt of a request for a re-determination of entitlement to FEA, Scottish Ministers should have 15 working days to make the fresh determination. This period is to be counted from the next working day after Social Security Scotland receives a re-determination request in the format required by the Agency. If there is a failure to make the re-determination within the 15 day period, the individual will be informed that they have a right to appeal to the First-tier Tribunal against the original determination.

**11. We have proposed that requests for an FEA re-determination should be made within 31 calendar days of receipt of notification of the original determination.**

**Do you think that is an acceptable time period?**

**Yes / No**

**If no, please explain:**

**12. We have proposed that an FEA re-determination should be processed within 15 working days of receipt of a request.**

**Do you think that is an acceptable time period?**

**Yes / No**

**If no, please explain**

## SECTION 7 – IMPACT ASSESSMENTS

As we have been assessing options for policy and regulations we have been gathering information on potential impacts and developing the following impact assessments on which we are now consulting:

### **EQUALITIES IMPACT ASSESSMENT & CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT**

It is expected that the specific changes to FEA, in comparison to the current Funeral Payment, together with the wider advantages derived from delivery through a more positive, responsive system, will impact positively on all those with protected characteristics that are eligible.

#### **Age**

We are aware there could be issues around the eligibility of younger applicants, partly in relation to their ability to be in receipt of a qualifying benefit, and partly around their ability to enter into a contract for services with funeral directors. We expect to develop policy on this matter further through engagement with appropriate stakeholders we further develop our process to deliver FEA.

The [2016/17 Social Fund Annual Report](#)<sup>viii</sup> suggests that around one third of payments are currently made to pensioners. We have sought to understand the views of older people throughout the development of FEA, for example by having the Scottish Older People's Assembly (SOPA) and Scottish Pensioners Forum as members of our reference group. We have also looked to engage directly with groups of older people at events such as a SOPA workshop on 23 April 2018.

As entitlement to FEA is based on receipt of a qualifying benefit, it is important that we encourage people to take up these benefits. A take up campaign ran in October 2017 aimed specifically at those aged 65+ and encouraged them to find out if they were eligible for benefits they were not currently receiving and if so, to apply for them. The campaign was carried out in partnership with Citizens Advice Scotland (CAS), with a campaign helpline set-up for this purpose. People were encouraged to call or visit their local bureau to find out what they may be entitled to and to get help applying. An [evaluation](#)<sup>ix</sup> of the campaign has been published.

#### **Gender**

The Scottish Government is also seeking to understand whether women are disproportionately impacted by funeral poverty given they generally have a higher life expectancy. At present, there is no data available on the current gender split in applications for the Funeral Payment, making it difficult to know whether this is an issue that merits further policy development. The Scottish Government will, therefore, continue to work with stakeholders to explore this issue and would welcome any additional evidence that could be provided in response to this consultation.

## **Race, Religion or Belief**

The DWP does not report information on race, religion or belief for the current Funeral Payment. To help the Scottish Government understand how any particular issues related to religion or belief might be addressed, a number of faith groups are members of the Funeral Expense Assistance Reference Group.

Some religions, including Islam and Judaism, have particular timescale requirements for funerals. We understand that most local authorities are able to provide faith burials or cremations although some have never received specific requests. We have heard that some faith burials may be more expensive but have so far been unable to obtain robust evidence in this area.

In addition, the Scottish Government would like to undertake discussions with faith groups on an individual basis as Funeral Expense Assistance continues to be developed. This will help ensure that, as far as possible, the assistance is fit for purpose and meets the needs of faith groups.

## **Disability**

In order to make the system accessible for people with a range of needs and preferences and to maximise take up, there will be multiple application channels for FEA. We are considering accessibility throughout the FEA development process by including users with various disabilities in all aspects of research and design and adhering to internationally recognised digital accessibility standards all with a view towards ensuring as inclusive and positive a service experience as possible.

It has been suggested that disabled people may incur additional transport costs and could be disadvantaged in the support provided through FEA. As transport costs for an applicant arranging or attending a funeral are based on actual costs incurred, the Scottish Government's initial view is that disabled people would receive support for additional transport costs incurred as a result of their disability. However, we would welcome any further comments or evidence on this matter and on any other impacts FEA may have in relation to disability.

## **Pregnancy / Maternity**

The current DWP Funeral Payment is available to help parents with funeral costs of a baby stillborn after 24 weeks of pregnancy. It has been suggested that we widen FEA eligibility to include provision for pre-24 week pregnancy loss. It has been highlighted that there may be societal behavioural changes in these circumstances with some families looking to arrange a funeral service themselves, instead of taking up the support currently available through the NHS.

We have sought to understand the views of the families, and the impact on other service providers through the development of FEA. This includes engagement with members of our reference group and with NHS Information Services. While families can opt to make their own arrangements at present, we heard that some families may decide to take up the support from the NHS because of an anxiety about the cost involved of making their own arrangements. There is limited data available in this area. There are currently no procedures for recording why families decide to take up the support available from the

NHS or make their own arrangements. In addition, many providers of funeral services (including private sector providers) already deliver their services either free or at a reduced rate in these circumstances, but there is no central record of this provision.

The Scottish Government is considering ways to further support families in these circumstances, and would welcome any additional evidence that could be provided in response to this consultation.

### **Gender Reassignment**

No issues have been raised by stakeholders in regards to this and we do not expect the FEA to negatively impact on this group. The FEA will be payable to anyone who meets the eligibility criteria. Work has been carried out to look at inclusive forms of address and how those who have had their gender reassigned are recorded and how the system(s) will manage this change. This work is on-going.

### **Sexual Orientation**

It has been highlighted that there may be some sensitivities around funerals for individuals who were involved in relationships where the family disapproved on the grounds of sexual orientation. Although anyone meeting the eligibility criteria, regardless of their sexual orientation, would qualify for FEA, we would welcome any further comments or evidence in this area.

### **Rural and Island Areas**

The Scottish Government understands there may be particular challenges for individuals arranging a funeral in a rural or island location, such as availability of service choice or transport costs. We will improve awareness of the support individuals can receive for additional transport costs which is expected to have a positive impact on the support available for people in rural areas.

We will also continue to work with stakeholders to explore how these regulations will be delivered in practice and would welcome any additional evidence that could be provided in response to this consultation that may support that process.

### **Bereaved Parents**

The Scottish Government understands that it can be especially difficult for parents to arrange the funeral of their child. This consultation paper sets out the Scottish Government's proposal not to make deductions from the payment where there an estate in the name of a child. We are also exploring ways to make the process of applying for support for the funeral of a child as easy as possible so will look to streamline the applications process wherever we can. More broadly we are considering ways to further support bereaved parents in Scotland and are engaging with local authorities, the funeral sector and other services to do this.

### **Other groups who may be affected by FEA**

We would also welcome views or evidence on other hard to reach groups who may be affected by FEA such as gypsy / traveller communities, and homeless people.

### **13. Do you have any additional evidence or impacts which are not covered in the EQIA or CRWIA?**



## **Partial Business and Regulatory Impact Assessment (BRIA)**

### **Background**

These regulations have been brought forward as a result of the devolution settlement enacted in the Scotland Act 2016 and the overarching framework for the new Social Security system set out in the Social Security (Scotland) Bill.

The Scotland Act 2016 gives the Scottish Government legislative competence over eleven benefits including the Funeral Expenses Payment (FEP). The Bill sets out the legislative framework for the administration of social security in Scotland and makes provision for operational functions such as managing overpayments, fraud, error and appeals.

Funeral Expense Assistance (FEA) is a replacement for the Funeral Expenses Payment currently administered by the Department for Work and Pensions (DWP). It is expected to launch by summer 2019.

The regulations for FEA will provide the details of the new benefit including eligibility criteria, payment level and application windows.

### **Objective**

FEA is designed to provide support to people on low incomes with a contribution towards the cost of a funeral to help alleviate the burden of debt they may face when paying for a funeral. FEA is a key part of the Scottish Government's wider work to tackle funeral poverty as set out in the [Funeral Costs Plan<sup>x</sup>](#).

The regulations will set out the circumstances in which an applicant will be eligible for financial support to arrange a funeral, and operational functions associated with the administration of the benefit, including the calculation of the level of the award.

In order to be eligible for FEA the following eligibility criteria will have to be met:

- applicant habitually resident in Scotland, and deceased ordinarily resident in UK;
- applicant on a low income benefit or tax credit; and
- applicant responsible for the costs of the funeral; and meets the 'nearest relative test' (based on the family hierarchy lists in the Burial and Cremation (Scotland) Act 2016).

The place of the funeral may be anywhere within the UK, or, in certain circumstances, in a member state of the EU, Iceland, Liechtenstein, Norway, or Switzerland.

The regulations will also set out:

- level of financial support available. The payment is calculated in two parts:
  - 1) **Uncapped element:** towards burial or cremation costs and certain transport costs; and
  - 2) **Flat rate:** introduced at £700, for any 'other' costs incurred (£120 where a funeral plan is in place to help pay for items not covered by the plan) and will be annually updated to reflect inflation.
- the application window – which will be from the date of death until 6 months after the date of the funeral.
- any deductions that may be made to that award such as assets of the deceased.
- provision for Social Security Scotland to administer and deliver this benefit by setting out the procedures for multiple applications, recovery from the estate of the deceased, and how the assistance will be paid.

## Rationale

These regulations will expand the support available so that more individuals on low income benefits who are arranging a funeral will be eligible to receive a contribution towards the funeral costs. The individuals who will be assisted by the payment would have had to make funeral arrangements in any case but they would not have received any financial support from the DWP to do this. As at present, support for either burial or cremation will be provided by the payment. As a result, these regulations are not expected to result in a behavioural change of the applicant when they are choosing the type of funeral service they want to arrange (which might impact upon burial and cremation authorities).

The FEA payment is solely concerned with providing financial support to the individual with funeral costs. Any action taken by a burial or cremation authority in Scotland in delivering the funeral for the individual will continue to be carried out in accordance with the relevant regulations under the Burial and Cremation (Scotland) Act 2016, and in line with any other appropriate regulatory requirements.

The FEA payment will support the following National Performance Framework objectives:

- We have tackled the significant inequalities in Scottish society.
- We live in well-designed, sustainable places where we are able to access the amenities and services we need.

It will also support the following National Performance Framework indicators:

- Reduce the proportion of individuals living in poverty.
- Improve Scotland's reputation.
- Improve mental wellbeing.

In relation to the five principles of better regulation:

- **proportionate** – Though FEA’s main positive impact is directly on applicants, the Scottish Government will look to identify and minimise any indirect negative impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the benefit. We will also look to identify and maximize positive impacts for the sectors where we are able to do so. For example, we will process FEA applications within 10 working days and make payments as soon as practicable thereafter. This is faster than the current FEP and is expected to reduce the amount of time that funeral directors have to carry debt, which is expected to have a positive impact on their businesses.
- **consistent** – The Scottish social security system take a rights-based approach to entitlement. The Scottish Government will publish guidance on the benefit so that people understand how decisions are being made. There will be a reconsideration process where an applicant disagrees with a decision and an appeal process to the Social Security tribunal.
- **accountable** – There are many levels of accountability in the new social security system. This starts with our commitment to applicants to understand their rights, including asking for a redetermination of a decision they are unhappy with and appealing that decision if they are still unhappy with the outcome of the redetermination, and goes all the way up to Scottish Ministers producing a yearly report on performance of the Scottish social security system. Woven in between this, the new charter will be co-designed with people that have lived experience of the system and will reflect the principles included in the Bill. Parliament will have a formal role in approving the first charter and any subsequent reviews. A new body called the Scottish Commission on Social Security will be established to ensure that people’s rights are protected at a more systemic level through placing a duty on the Commission to report independently on the system’s performance against the charter. The Scottish Public Services Ombudsman will be able to use the charter as an independent set of standards to deliver robust individual redress. Courts and Tribunals will also be able to take the charter into account where it is considered relevant to proceedings.
- **transparent** – We will develop a communications strategy for FEA. This will aim to ensure that people who are eligible, the funeral industry, local government and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. We will publish guidance on the benefit so that people understand how decisions are being made.
- **targeted only where needed** – FEA is targeted at people on lower incomes. There are projected to be around 56,000 deaths in Scotland each year and the Scottish Government expects to make around 5,600 FEA payments per year.

## Consultation

We have looked to gather views in a number of ways including:

- Through the Social Security in Scotland Consultation which ran from July to October 2016. The section on FEA received 156 responses – 84 from individuals and 72 from organisations.
- During three roundtable meetings and the National Conference on Funeral Poverty in 2016.
- From Experience Panel members – these are people with experience of the current benefits system.
- From the FEA Reference Group, which was established in March 2016. The group has met nine times to help gather evidence, bring a variety of informed perspectives and provide feedback on proposals. Members of the group include COSLA, funeral directors, and third sector organisations such as Citizens Advice Scotland, Child Poverty Action Group, and Quaker Social Action.
- Through publication of illustrative regulations in December 2017. These were shared with the Scottish Parliament and with over 3,000 organisations and individuals through our Social Security Newsletter.
- By meeting individual organisations to discuss specific areas and interests. This includes meetings with the National Association of Funeral Directors (26 March 2018), the National Society of Allied and Independent Funeral Directors Annual General Meeting (22 February 2018), Dignity (22 January 2018), Citizens Advice Scotland (19 March 2018), COSLA (24 April 2018), the Roman Catholic Church (27 March 2018).

The 12 week consultation period on the draft FEA regulations, EQIA & CRWIA considerations and BRIA will give individuals and businesses further opportunities to comment on the potential impact on individuals, businesses, local government and the third sector. We welcome views to help us further develop the contents of this BRIA.

### Sectors and groups affected

Local authorities provide burial services in their local area, along with private cemetery providers. In addition, 14 local authorities in Scotland also run crematoriums. There are 16 non-local authority crematoriums currently operating in Scotland. One of these, at Glasgow Crematorium (formerly known as Maryhill), is a charity. The others are private businesses. There are also a number of private burial providers in Scotland, such as the Roman Catholic Church and those providing green / natural burials.

There are approximately 450 individual funeral director businesses in Scotland. This figure does not include the sometimes tens of branches of bigger businesses like the Co-operative or Dignity. These are counted as one business.

Around 80% of funerals in Scotland are carried out by funeral directors who are members of the National Association of Funeral Directors or the National Society of Allied and Independent Funeral Directors. It should be noted that some funeral directors are members of both organisations, while others are members of neither.

The Scottish Government has appointed an Inspector of Funeral Directors who took up her post in July 2017. An Inspector of Crematoria has been in post since April 2015 and an Inspector of Burials will be appointed in due course. The Scottish Government does not consider that the FEA regulations will have any direct impact on the work of these inspectors. We are, however, liaising with the current inspectors to understand any indirect impacts and so that they understand the changes to support available to members of the public as a result of the introduction of FEA. If, in the future, a licence or register is introduced for Scottish funeral directors then Social Security Scotland would expect to make FEA payments only to funeral directors in Scotland who are on the licence or register. We would expect to make some payments to funeral directors in the rest of the UK and would look to take a similar position should a statutory register or licensing of funeral directors be introduced elsewhere.

### **Option 1 - Do nothing:**

Transfer of powers to Scotland to deliver support for funerals is set out in the Scotland Act 2016 and provision has been made in the Social Security (Scotland) Bill. Therefore, not taking over powers from the DWP is not considered to be a viable option.

### **Benefits and Costs**

There are not considered to be any benefits to this option.

If the DWP were to stop making FEP payments to Scottish applicants and the Scottish Government did not provide a benefit to replace this provision then around 3,500 people per year would be worse off as they would not receive financial support with funeral costs. This loss of support would be expected to total around [£5 million initially](#)<sup>xi</sup>. This would be expected to have an impact on the funeral industry – as more individuals would be likely to struggle to meet funeral costs and would be more likely to default on their bill. This would result in increased debt for the funeral directors which could result in some providers ceasing trading.

Alternatively, some families might decide that they were unable to afford to arrange a funeral without financial support. In these circumstances, it is expected that responsibility for ensuring burial or cremation takes place would fall to the local authority in the area where the person has died, as a National Assistance Funeral. Local authorities would need to find additional resources to meet these funeral costs – either from existing funding or through increases in burial and / or cremation fees or through increases in Council Tax rates.

### **Option 2 - Introduce benefit on same basis as current DWP provision:**

#### **Benefits and Costs:**

If the Scottish Government provides a replacement benefit on this same basis as current DWP provision this would provide around 3,500 payments each year, totalling around [£5](#)

[million benefit expenditure initially<sup>xii</sup>](#). The funeral industry (including public and private cemeteries and crematoriums, and funeral directors) would be expected to ultimately receive most of this in payment for their services, as is the case at present.

The costs to the Scottish Government of this option would be expected to be in line with the funding transferred from the UK Government. Implementing the current DWP model would mean that the value of the capped element of the payment, which has been frozen at £700 since 2003, would continue to lose value over time, meaning that the gap between the average payment and the cost of a funeral would be expected to grow. In continuing to freezing the capped element of the payment, and by maintaining current eligibility, there would be expected to be an increase in the level of bad debt carried by funeral directors over time, as more people struggle to pay funeral costs. Processing payments to the current timescales would mean that applicants and the funeral industry would continue to face uncertainty on the amount of time that it would take to find out whether an application had been successful.

### **Option 3 - Introduce FEA (recommended option):**

The Scottish Government will deliver FEA by summer 2019 in Scotland, replacing the current DWP Funeral Expenses Payment. This decision followed extensive engagement with stakeholders as set out in the Consultation section of this partial BRIA.

FEA will provide a one off payment to support people on certain benefits or tax credits with a contribution towards the cost of a funeral. This is intended to alleviate the burden of debt they may face, helping to reduce funeral poverty.

Changes to FEA compared to the current Funeral Payment include:

- Using a clearer and more flexible assessment process to determine who is responsible for the funeral costs;
- Uprating the flat rate element of the payment annually in light of inflation;
- Introducing a 10 working day processing time for completed applications;
- Developing clear communications about FEA to raise awareness of the benefit and make it easier to understand in advance who is likely to be eligible for support; and
- Introducing Social Security Scotland pre-claim support.

### **Benefits and costs**

As a result, it is expected that an additional 2,000 FEA payments will be made each year in Scotland, compared to the current DWP Funeral Payment. This will take the total number of payments to around 5,600 per annum. To support this widened eligibility, the Scottish Government expects to invest an extra [£3 million<sup>xiii</sup>](#) in FEA each year above the budget that will transfer from the UK Government (an increase of 60%). As these funerals would have been taking place in any case, the additional expenditure will benefit individuals by providing support to pay for the funeral, reducing the burden of debt they face. It is also expected to reduce the level of bad debt carried by funeral directors as more people facing funeral poverty would be expected to receive a payment with much of the additional £3 million expected to be paid to funeral directors.

The Scottish Government will also uprate the value of any relevant figures in the FEA regulations annually to take into account the impact of inflation. This requirement to uprate will apply to the £700 flat rate element of FEA. At present, we expect that this will result in around £70,000 additional benefit expenditure in the first year that uprating is applied, in addition to the £3 million of additional expenditure already committed to widen eligibility. Annual uprating of the flat rate element of the FEA payment will mean that the value of this part of the payment will not be eroded due to inflation. The Scottish Government understands that the majority of the flat rate element of the payment is made to funeral directors towards their fees.

### **Scottish Firms Impact Test**

As set out in the Consultation section of this partial BRIA, engagement with the funeral industry and other stakeholders about FEA has been ongoing for a significant period of time, including through a National Conference on Funeral Poverty, stakeholder reference group, and meetings with individual stakeholder organisations. The Scottish Government would be happy to meet funeral directors and other businesses affected by FEA to discuss the contents of this partial BRIA and development of FEA more generally, in addition to considering written comments in response to this consultation.

Issues highlighted by funeral directors, funeral director professional associations, and local authorities to date include:

- Increasing the £700 element and committing to annual uprating

The majority of stakeholders, including funeral directors and their representative bodies, and a number of Social Security Bill consultation responses suggested that the element of the FEA payment for other expenses should be increased above the £700 maximum currently paid by DWP. This has been frozen since 2003.

The Scottish Government has considered increasing the amount payable for other expenses as part of the policy development process that has taken place for FEA to prepare these illustrative regulations. In doing so, we are balancing widening eligibility for FEA to assist more of those in need with the overall amount of the payment. This change is expected to result in approximately 2,000 additional payments per year. This is a 56% increase compared to the current DWP Funeral Payment and is the best way of assisting more of those in need who would otherwise receive no support at all.

The Scottish Government has committed, through a stage 3 amendment to the Social Security Bill, to uprate any relevant figures specified in the FEA regulations annually to take into account the impact of inflation. At present, this will apply to the flat rate for other expenses (currently £700) and will protect individuals from any further reduction to the value of this part of the payment due to inflation.

- Continuing DWP policy of making payments directly to funeral directors where there is an outstanding funeral bill

We understand that currently DWP makes the Funeral Payment directly to the funeral director on behalf of the applicant in the majority of cases. However, the applicant can specifically request the payment to be made to them if they wish, and this would clearly happen when the bill had already been paid. The current process provides the funeral

director with reassurance they will receive payment for their services if the applicant is successful in their application; and reduces the administrative burden on the applicant to forward on their award to help reduce, or clear, any outstanding debt for the funeral service, at a time when they will be grieving. The funeral industry has strongly indicated that it would wish this process to continue for FEA.

We have also tested this with a number of other stakeholders. Many participants supported the idea of payments being made directly to funeral directors and felt that this would make things easier for the family. However, others felt it was important to have a choice, or preferred for the payment to be made to them. The Scottish Government has also heard that making payments to funeral directors could help avoid situations of financial abuse. It has been suggested by stakeholders representing advice providers that this policy should be delivered in a more transparent manner than at present to ensure the applicant is fully informed and able to take decisions throughout the process.

- Processing payments quickly, making a decision in principle and deposit payments

The Scottish Government has made a commitment that FEA applications will be processed within ten working days of receipt of a completed application, and payment made as soon as practicable thereafter. This responds to concerns that have been raised by organisations, including the funeral industry, that the current DWP assessment process takes too long. This commitment will provide additional certainty for applicants and funeral directors about when a payment will be made and is considerably faster than the current DWP target of 15 working days, which was met in 18.67% of cases in 2016/17. The Scottish Government will collect management information for FEA in a number of areas, including on performance against the ten day processing commitment and is considering the most appropriate means of reporting this information. This will allow FEA policy to be reviewed in the future using a robust evidence base.

A number of funeral directors and some other stakeholders have suggested that taking a decision in principle at the point of application was worth exploring as it would give people reassurance that they would receive support and therefore feel more able to plan a funeral. Following on from a decision in principle, the Scottish Government has heard that making deposit payments would reduce the risk of bad debt for funeral directors. However, there was acknowledgement from stakeholders that an incorrect decision in principle could be distressing and more difficult than the uncertainty under the present system. It was suggested that in order to be effective a decision in principle had to be provided very quickly. However, to take that decision with a sufficient level of confidence that it would not be reversed later in the process would require evidencing. That might result in a decision in principle not being provided much faster than the existing 10 day processing commitment. It was noted that this would potentially double administration requirements and therefore increase costs. We heard that some Local Authorities had tried to take decisions in principle for Housing Benefit decisions and this had proved to be very difficult in practice.

Having considered the range of views expressed, the Scottish Government has decided that the risks of taking an incorrect decision and potential additional administration costs outweigh the potential benefits of taking a decision in principle and so have decided not to take forward this proposal. Instead, we will process payments within 10 working days



and will develop clear communications to make it as easy as possible for applicants and the funeral industry to understand in advance if someone is eligible for a payment.

- Removal of the lower flat rate of £120 for 'other expenses' where the person who has died had a funeral plan

The industry representative bodies for funeral directors (National Association of Funeral Directors, and the National Society of Allied and Independent Funeral Directors), individual funeral directors and some other stakeholders have proposed that the current lower flat rate of £120 for 'other expenses' is removed. At present, this rate is used rather than the £700 rate in circumstances where the deceased has made provision for their own funeral through a funeral plan, though data is not available from DWP to assess how often this lower payment amount is applied in practice. It has been suggested this lower rate may act as a disincentive for individuals to save for their own funeral. However, removing this rate would mean that some applicants would receive the full £700 in addition to having almost all funeral costs paid for by a funeral plan. These applicants would be in a better position than applicants where the deceased had made provision for the funeral in ways other than a funeral plan (for example a bank savings account) as these savings would be deducted from the payment amount. This would create an unfairness in the system. Having considered the benefits and risks of this proposal, the Scottish Government has decided not to remove the lower £120 flat rate for FEA.

- Making it easier to determine in advance who is eligible for a payment

The Scottish Government's policy intention is that eligibility will in part depend on the familial relationship or friendship that the applicant had with the person who has died. Currently, the DWP makes the decision about who is the appropriate person to take responsibility for arranging the funeral by asking the applicant a series of questions about their relationship with the person who has died. We have heard that the questions asked are intrusive and distressing (for example in relation to estrangement or financial circumstances of other family members). The complex assessment process extends the length of the current application form and we have heard that it can make it difficult to determine in advance whether someone is likely to be successful in their application.

The Scottish Government has been looking at ways to make this process less intrusive, to avoid having to make judgements about family relationships, and to make it clearer in advance who is eligible for FEA. Based on feedback from stakeholders, including the Scottish Working Group on Funeral Poverty, the Scottish Government has decided to use the lists in the [Burial and Cremation \(Scotland\) Act 2016<sup>xiv</sup>](#). These lists set out who is the nearest relative of the person who has died, so it is clearer who would make the arrangements for the burial or cremation. In addition to using the family relationship lists in this Act, a key difference from the current DWP Funeral Payment process is that if there was another family member in the same level of the list as the applicant we would not ask the applicant questions about the other person's circumstances in order to consider whether the other family member should take financial responsibility for the funeral. Instead we would accept that the applicant is an appropriate person to take financial responsibility for the funeral. This makes it much clearer before an application is made whether the applicant is likely to be successful. This additional certainty is expected to be beneficial for both applicants and funeral directors.

## Competition Assessment

The four Competition and Markets Authority (CMA) Competition Assessment Questions are:

- Will the measure directly or indirectly limit the number or range of suppliers?

The Scottish Government does not consider that introduction of FEA will directly or indirectly limit the number or range of suppliers. For example, the Scottish Government has not specified what the £700 flat rate element of the payment should be used for, apart from that it must be for funeral costs. This means that applicants will retain flexibility to decide what services they wish to purchase, rather than being limited to certain specified elements of the funeral – which could have limited the range of suppliers. Similarly, the uncapped element of the payment will continue to fund either burial or cremation charges, so that FEA recipients are able to choose which best fits their circumstances. It is expected that the majority of people will use a funeral director but the Scottish Government will also provide payments to people who choose not to use a funeral director, so not limiting the range of suppliers that can be used.

- Will the measure limit the ability of suppliers to compete?

The Scottish Government does not consider that introduction of FEA will limit the ability of suppliers to compete. The payment will help consumers to pay for the costs of a funeral and will not favour any particular supplier over another. We expect to work with the funeral industry as we develop the process to deliver the benefit and would welcome further engagement with an suppliers of funeral services who wish to understand better how the payment will operate.

- Will the measure limit suppliers' incentives to compete vigorously?

The Scottish Government does not consider that introduction of FEA will limit suppliers' incentives to compete vigorously. The payment will help consumers to pay for the costs of a funeral and will not favour any particular supplier over another. Widening eligibility and ensuring that the value of the payment is not eroded by inflation should encourage the funeral industry to compete for this business, as they will have more confidence that applicants will be able to pay for the funeral costs, rather than bad debt arising.

- Will the measure limit the choices and information available to consumers?

The Scottish Government does not consider that introduction of FEA will limit the choices and information available to consumers. The Scottish Government has been clear that the flat rate part of the payment (currently £700) should not be limited in what it is used for, simply that it must be for funeral costs. This means consumers will be free to make choices about what they wish to have for the funeral. Similarly, the payment will continue to fund either burial or cremation charges, so the consumer is able to choose which best fits their circumstances. It is expected that the majority of consumers will use a funeral director but the Scottish Government will also provide payments to people who choose not to use a funeral director, so not limiting consumer choice.

Prior to launch, a communication strategy will be developed to ensure that applicants and the services that they come into contact with and might seek support from are aware of the new benefit, their entitlement, and how they can access it. The Scottish Government has already taken action to increase awareness of funeral options and costs through the Planning Your Own Funeral leaflet which was published in August 2017. We will continue to look for opportunities more generally to increase the information available to consumers to help them make informed choices when planning for or arranging a funeral, including those eligible for an FEA payment.

### **Test run of business forms**

We do not anticipate the introduction of any additional forms for businesses as a result of these changes. A new form for applicants will be introduced and will replace the existing form currently processed by DWP. This form will only be introduced after an extensive user testing process. This user testing is expected to involve people with experience of the current system, potential applicants, funeral directors and other organisations with experience of the current FEP. It is expected that it will be possible to make applications online, by post or over the phone. Support from Social Security Scotland will also be available in local areas.

### **Legal Aid Impact Test**

Someone who has applied for an FEA payment but whose application has been unsuccessful will be able to ask Social Security Scotland for a re-determination without having to supply further evidence, but the Agency will take into consideration any new evidence provided. The timescales for a requesting a re-determination and the time period allowed for the Social Security Scotland to complete the re-determination will be set out in the FEA regulations.

If the individual is dissatisfied with the re-determination outcome, they can appeal that to the First-tier Tribunal. Advice and assistance is available to enable solicitors to provide initial advice on social security appeals. Assistance in the form of representation is not available, but this is available for an onward appeal to the upper tribunal dependent on eligibility.

Legal assistance is subject eligibility testing dependent on the type of assistance sought. This may include financial eligibility testing based on the “disposable income” and “disposable capital” of the applicant. However, where a person receives certain means-tested benefits (such as Income Support and Job Seeker’s Allowance which are qualifying benefits for FEA) they will be automatically eligible for legal assistance. Certain other benefits, such as Personal Independence Payment (which is not an FEA qualifying benefit), are not considered to be part of a person’s disposable income.

The Scottish Government expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

## **Enforcement, sanctions and monitoring**

There will be no additional enforcement, sanctions or monitoring of the services provided by funeral directors, burial and cremation authorities or any other businesses that supply funeral services to FEA applicants. As such, there will be no new burdens for businesses, local government or the third sector generated by these regulations.

The Social Security Bill places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. Audit Scotland will monitor and report on the delivery of the social security system, including the new Social Security Scotland Agency.

## **Implementation and delivery plan**

FEA will be delivered in Scotland by Social Security Scotland (an Executive Agency of the Scottish Government) by summer 2019. A consultation on the draft regulations will take place in 2018 (along with the consultation on this draft BRIA) with final regulations expected to be laid in 2019.

A communications strategy will be developed in advance of launch of FEA. This will aim to ensure that people who are eligible, the funeral industry, local government and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria.

FEA is a key part of the Scottish Government's work to reduce funeral poverty and we will ensure that FEA is linked into this wider work, bereavement policy, and social security policy more generally.

- **Post-implementation review**

The Scottish Government will collect more robust management information for FEA than is currently available for FEP. We will use this information, along with additional sources of feedback from applicants and others, to undertake a review of FEA within 10 years of its implementation.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<p><b>Do Nothing</b> Scottish Government would save £5 million per year.</p>	<p>3,500 recipients would cease to receive funeral assistance (initially worth approx. £5 million per year). There would likely be a significant increase in funeral poverty as a result.</p> <p>There would likely be greater uncertainty in the funeral industry around receiving payment for services and there would likely be an increase in level of bad debt carried by funeral directors.</p> <p>We expect Local Authorities would face additional costs as the number of National Assistance Funerals provided by Local Authorities would be likely to increase.</p>
2	<p><b>Introduce FEA same as current DWP scheme</b> 3,500 recipients will continue to receive funeral assistance (initially worth approx. £5 million per year).</p>	<p>Gap between amount of the payment and funeral costs would be expected to grow over time as capped element remains frozen at £700. This, combined with no widening of eligibility would mean an expected increase in bad debt for funeral industry and increase in unsustainable debt for people paying for a funeral.</p> <p>The public, and funeral directors, would face continuing uncertainty about the timescale for a payment to be made.</p>
3	<p><b>Introduce Expanded FEA</b> An additional 2,000 payments will be made per year compared to the current DWP scheme (initially worth £3 million per year). Total number of payments will therefore increase to 5,600 per annum (initially £8 million per year).</p> <p>Reduced application target from 15 to 10 days will mean individuals and funeral directors will get payments more quickly.</p> <p>Some part of the additional £3 million per year cost and inflation linked payments will benefit funeral directors and private and public</p>	<p>Additional £3 million cost of payments to the Scottish Government per year due to widened eligibility.</p> <p>Flat rate payments linked to inflation meaning the on-going cost will increase each year. In the first year this is forecast to cost the Scottish Government an additional £70,000.</p>

	<p>crematoriums in Scotland – some will be displaced outside of Scotland where a deceased relative is outside of Scotland. All of this cost will benefit individuals who are resident in Scotland however, tackling funeral poverty experienced by those on a low income.</p> <p>More widely, the simplified eligibility and improved communications will make it easier for beneficiaries to access support.</p>	
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Having undertaken significant engagement with a range of organisations and individuals, and taking into account the limited data available on the current FEP, the Scottish Government considers that the recommended option (option 3) to deliver FEA is the most suitable way to provide support to people on low incomes with funeral costs. We consider that implementing this model will have a positive impact for funeral directors, local authorities and private burial and cremation authorities, in addition to having a beneficial impact for those receiving a payment.

**14. Do you have any additional evidence or impacts which are not covered in the draft BRIA?**

These draft regulations have been prepared for consultation purposes.

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D R A F T   S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

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**2019 No.\*\*\***

**SOCIAL SECURITY**

**The Funeral Expense Assistance (Scotland) Regulations 2019**

*Made* - - - - - **\*\*\* 2019**

*Coming into force* - - - - - **\*\*\* 2019**

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These draft regulations have been prepared for consultation purposes.

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 34 of the Social Security (Scotland) Act 2018<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 98 of that Act, no consultation with the Scottish Commission on Social Security was required.

## PART 1

### Introductory

#### Citation and commencement

1. These Regulations may be cited as the Funeral Expense Assistance (Scotland) Regulations 2019 and come into force on \*\*\* 2019.

## PART 2

### Interpretation

2. In these Regulations—

“applicant” means a person who has applied for funeral expense assistance;

“burial” does not include burial of ashes, where a person’s remains have been cremated;

“determination” means a determination of an individual’s entitlement under section 37 of the Social Security (Scotland) Act 2018;

“funeral” means a burial or a cremation of a deceased person, or of a still-born child within the meaning given by section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965<sup>(b)</sup>;

“partner” means—

(i) where a person is living together with a spouse or civil partner, that other person;

(ii) where a person is living together with a person as a married couple, that other person.

## PART 3

### Eligibility

#### Applications

3.—(1) A person who applies for funeral expense assistance (the “applicant”) is entitled to receive it if that person—

(a) applies within the period described in regulation 4, and

(b) meets the conditions prescribed in these Regulations.

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(a) 2018 asp xx.

(b) 1965 c.49, which is amended by section 1(2) of the Still-Birth (Definition) Act 1992 (c.29).



These draft regulations have been prepared for consultation purposes.

(2) Regulations 5 and 6 describe eligibility conditions relating to the applicant's relationship to the deceased person and multiple applications.

(3) Regulation 7 describes eligibility conditions relating to the applicant's residence, the last residence of the deceased person and the place where the funeral takes place.

(4) Regulations 8 and 9 describe eligibility conditions relating to the financial means of the applicant, based on receipt of income related benefits, and of the estate of the deceased person.

(5) An application is to be treated as made on the day it is received by the Scottish Ministers.

(6) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

- (a) made in the form, and
- (b) accompanied by the evidence,

required by the Scottish Ministers under section 38(1) of the Social Security (Scotland) Act 2018.

### **Period for applications**

**4.—**(1) A person is not entitled to funeral expense assistance unless an application for that assistance is made within the period described in this regulation.

(2) No application for funeral expense assistance may be made prior to the date on which the person whose funeral is being arranged becomes deceased.

(3) No application for funeral expense assistance may be made after the day falling six months after the day on which the funeral takes place.

(4) In calculating the end of the period for an application where the day of the month on which the funeral takes place is the 29th, 30th or 31st, and the month falling six months after that month does not have such a date, the period ends on the last day of the later month.

### **Relationship to deceased person**

**5.—**(1) To qualify for funeral expense assistance the applicant, or the partner of the applicant, must have accepted responsibility for the expenses of the funeral, and the Scottish Ministers must consider it to be reasonable for that responsibility to have been accepted.

(2) In determining whether it was reasonable to accept responsibility, the Scottish Ministers must consider—

- (a) whether someone other than the applicant, or the partner of the applicant, would be the nearest relative of the deceased person in terms of section 65(3) to (6) (arrangements on death of adult) of the Burial and Cremation (Scotland) Act 2016(a); and
- (b) any other relevant circumstances that the applicant brings to their attention.

(3) Where the deceased person was under 16 years of age on the day of his or her death, or was a still-born child, for the purposes of paragraph (2)(a) regard is to be had to section 66(3) to (5) (arrangements on death of child) of the Burial and Cremation (Scotland) Act 2016 instead of section 65(3) to (6).

### **Multiple applications**

**6.—**(1) Where two or more persons accept responsibility for the expenses of the funeral, and apply for funeral expense assistance, the Scottish Ministers must consider which of the persons is the nearer (or nearest) relative of the deceased person, applying the approach described in regulation 5(2)(a).

(2) The Scottish Ministers must determine the application by the nearer relative before they determine any other application for assistance.

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(a) 2016 asp 20.

These draft regulations have been prepared for consultation purposes.

(3) Where, in applying paragraph (1), two or more applicants for assistance rank equally as the nearer relative and are not in agreement as to which application is to be progressed, the Scottish Ministers must decide which application is to be progressed first.

(4) Where a determination is made to give a person funeral expense assistance in respect of a funeral, only that person is eligible for such assistance in respect of the expenses of a funeral of the deceased person.

(5) Where the Secretary of State decides to make a funeral payment within the meaning of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005(a) or the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005(b), no person is eligible for funeral expense assistance to meet, or help meet, expenses of a funeral in respect of the deceased person.

### **Residence conditions, place of funeral and status**

7.—(1) To qualify for funeral expense assistance, the applicant must be habitually resident in Scotland at the date of their application for that assistance.

(2) The applicant is not entitled to that assistance unless—

- (a) the deceased person was ordinarily resident in the United Kingdom at the date of his or her death; and
- (b) the place of the funeral is in the United Kingdom, or in a case where paragraph (3) applies, in a member state of the EU, Iceland, Liechtenstein, Norway or Switzerland.

(3) This paragraph applies where the applicant is, or has a partner who is—

- (a) a worker or a self-employed person for the purposes of Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States(c);
- (b) a person who retains the status of a worker or a self-employed person pursuant to Article 7(3) of that Directive;
- (c) a person who is a family member of a person referred to in sub-paragraph (a) or (b) within the meaning of Article 2 of that Directive; or
- (d) a person who has the right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive.

(4) A person is not entitled to funeral expense assistance if, at the time the application is made, the person is subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(d), unless the person falls within a category or description of persons specified in Part 2 of the schedule of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (persons not excluded under section 115 of that Act from entitlement to various social security benefits)(e).

### **Qualifying benefits**

8. To qualify for funeral expense assistance the applicant, or the partner of the applicant, must, at the time of application, have been properly awarded—

- (a) income support under section 124 of the Social Security Contributions and Benefits Act 1992(f);
- (b) state pension credit within the meaning given by section 1(1) of the State Pension Credit Act 2002(g);

(a) S.I. 2005/3061. There are amendments that are not relevant to this regulation.

(b) S.I. 2005/506. There are amendments that are not relevant to this regulation.

(c) O.J. L.158, 30.4.2004, p.77.

(d) 1999 c.33. There are amendments to section 115 that are not relevant to these Regulations.

(e) S.I. 2000/636.

(f) 1992 c.4.

(g) 2002 c.16.

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- (c) income-based jobseeker's allowance within the meaning of the Jobseekers Act 1995(a);
- (d) working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(b) is included in the award;
- (e) child tax credit which includes an individual element or a disability element referred to in section 9(3) of the Tax Credits Act 2002(c);
- (f) housing benefit within the meaning of section 123 of the Social Security Contributions and Benefits Act 1992;
- (g) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007(d), or
- (h) universal credit under Part 1 of the Welfare Reform Act 2012(e).

### Estate of deceased person

**9.**—(1) A person is not entitled to funeral expense assistance if assets of the deceased person are available and sufficient to meet the costs of a funeral.

(2) No regard is to be had to the assets of a deceased person for the purpose of paragraph (1) if that person was under the age of 16 on the day of his or her death.

(3) For the purpose of paragraph (1) any lump sums due to the applicant or others by virtue of any insurance policy, occupational pension scheme, burial club, or similar scheme may be considered an asset of the deceased person.

## PART 4

### Assistance to be given

#### Calculation and form of funeral expense assistance

**10.**—(1) The funeral expense assistance to be given is an amount calculated in accordance with regulation 11, less any applicable deductions provided for by regulation 12.

(2) Funeral expense assistance is to be given as money (subject to paragraph (3)).

(3) If—

- (a) the Scottish Ministers offer to give an individual some or all of the value of funeral assistance in a form other than money; and
- (b) the individual accepts the offer,

the assistance is to be given in the form offered.

#### Amount of funeral expense assistance

**11.**—(1) The amount of funeral expense assistance is—

- (a) an amount calculated by reference to the costs which the person assisted incurs in arranging the funeral, so far as reasonable and of the types described in paragraph (2); a
- (b) a payment of £700, except where paragraph (6) applies, and
- (c) transport costs, so far as reasonable and of the types described in paragraph (7).

(2) The types of funeral costs for which assistance is given are the costs of—

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(a) 1995 c.18.  
 (b) S.I. 2002/2005.  
 (c) 2002 c.21.  
 (d) 2007 c.5.  
 (e) 2012 c.5

These draft regulations have been prepared for consultation purposes.

- (a) burial (see paragraph (3)) or cremation (see paragraph (4)),
  - (b) if required, the cost of any medical references and of certificates from a registered medical practitioner, and
  - (c) obtaining any documents to release assets of the deceased person for the purposes of regulation 12 (deductions from an award).
- (3) For a burial, the costs are—
- (a) the cost of a new burial plot with a right of burial in it;
  - (b) fees levied by the local authority or person responsible for the operation of burials in the area where the burial takes place;
  - (c) the cost of grave-digging.
- (4) For a cremation, the costs are—
- (a) fees levied by the local authority or person responsible for the operation of crematoriums in the area where the cremation takes place;
  - (b) the fee for removal of any active implantable medical device, within the meaning of the Medical Devices Regulations 2002<sup>(a)</sup>, subject to a limit of £20 where the removal is not carried out by a registered medical practitioner.
- (5) Where a deceased person is not buried or cremated in the area in which they lived, and the costs of their burial or cremation (including transport costs) exceed those that would have applied had the burial or, as the case may be, cremation taken place in that area, no assistance is to be given for those additional costs.
- (6) The payment in paragraph (1)(b) is £120 where the deceased person—
- (a) has left provision of the type described in regulation 9(3), and
  - (b) was aged 16 or over on the day of his or her death.
- (7) The types of transport costs for which assistance is given are the costs of—
- (a) transport within the United Kingdom from the place where the body is situated to a funeral parlour, to the deceased person's last residence, or to another place where it is appropriate for the body to lie prior to the funeral, plus a return journey, but not including the first 80 kilometres of travel;
  - (b) subject to paragraph (8), vehicular transport for the coffin and bearers, and one additional vehicle, from the funeral director's premises or place where the body is lying to the funeral, plus a return journey, but not including the first 80 kilometres of travel;
  - (c) one return journey by the person assisted either for the purpose of making arrangements for the funeral or for attendance at the funeral, but not exceeding the cost of a return journey from the person's home to the place of burial or cremation.
- (8) Where assistance is given for burial or cremation costs under paragraph (2)(a), no assistance is to be given for transport costs under paragraph (7)(b) unless—
- (a) the distance travelled necessarily exceeds 80 kilometres, or
  - (b) in the case of a burial, where no costs have been incurred for purchase of a burial plot under paragraph (3)(a), the distance travelled exceeds 80 kilometres.

#### **Deductions from an award of funeral expense assistance**

**12.—**(1) There is to be deducted from the amount of funeral expense assistance any funds or contribution which is available towards meeting the expense of the funeral from—

- (a) any assets of the deceased person which are available without confirmation having been granted, or (elsewhere in the United Kingdom) without probate or letters of administration, but ignoring any assets described in paragraph (3);

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(a) S.I. 2002/618.

These draft regulations have been prepared for consultation purposes.

- (b) any pre-paid funeral plan, insurance policy, occupational pension scheme, burial club, or similar scheme or arrangement;
- (c) a funeral grant, made out of public funds, in respect of the deceased person having been entitled to a war disablement pension within the meaning of section 17 of the State Pension Credit Act 2002.

(2) No deduction is to be made under paragraph (1) if the deceased person was under the age of 16 on the day of his or her death.

(3) For the purposes of paragraph (1)(a), the following sums payable to the estate of the deceased person are to be ignored—

- (a) arrears of any benefit under any enactment relating to social security in any part of the United Kingdom;
- (b) arrears of any assistance provided for by regulations under Parts 2 or 3 of the Social Security (Scotland) Act 2018, or under section 81 (carer's allowance supplement) of that Act.

St Andrew's House,  
Edinburgh  
\*\*\* 2019

[\*\*\*]

DRAFT REGULATIONS

These draft regulations have been prepared for consultation purposes.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision under section 34 of the Social Security (Scotland) Act 2018 for payments to be made to help eligible persons meet funeral expenses.

Regulations 1 and 2 are formal and contain interpretation provisions. Regulations 3 and 4 provide that applications are required and describe the time frame within which those applications can be made.

Regulations 5 to 8 set out entitlement rules. These rules are based on the closeness of the relationship the applicant had with the deceased person, whether anyone else is seeking assistance and conditions relating to the place of the funeral and whether the applicant or the applicant's partner is in receipt of a qualifying benefit (as described in regulation 8).

Regulation 9 provides that no assistance will be provided if the deceased person left assets that are available to cover the cost of the funeral, unless the person was under 16 years old when he or she died.

Part 4 sets out how the amount of funeral expense assistance is to be calculated. It describes deductions that can be made from an award of assistance and sets out circumstances in which no such deduction is to be made.

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.



## Consultation on the Funeral Expenditure Assistance (FEA) Regulations 2018

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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 Scottish Government to contact you again in relation to this consultation exercise?" again with the yes or no check boxes.

- Yes
- No

## ANNEX B

### CONSULTATION QUESTIONS

#### Questions on Policy Proposals

##### Question 1

Do you think that the draft regulations (Annex A) are likely to meet the policy intent set out in this document?

Yes  / No

If no, please explain:

##### Question 2

Can you identify any potential unintended consequences of the regulations?

Yes  / No

If no, please explain:

##### Question 3

Can you identify any gaps in the regulations?

Yes  / No

If no, please explain:



## ANNEX B

### Question 4

Is the application window for FEA clear?

Yes  / No

If no, please explain:

### Question 5

We have proposed that the applicant must usually have the nearest relationship to the person who has died, and in exceptional family circumstances, such as estrangement, that they explain to Social Security Scotland why they should be considered to be the appropriate person who will take financial responsibility for the funeral.

Do you agree with this approach?

Yes  / No

If no, please explain:

### Question 6

We have proposed that applicants must be habitually resident in Scotland, and the person who has died must be ordinarily resident in the UK to qualify.

Do you agree with a this approach?

Yes  / No

If no, please explain:

## ANNEX B

### Question 7

We proposed that qualification by being in receipt of UC should be an award of more than £0 in the month before or the month in which the application is made.

Do you agree with a this approach?

Yes  / No

If no, please explain:

### Question 8

Is the qualifying benefit / tax credit eligibility clear?

Yes  / No

### Question 9

We have proposed to continue with the presumption that where there is a bill outstanding and the applicant consents, the payment will be made directly to the funeral director. Where the bill has already been paid, the payment will be made to the applicant.

Do you agree with a this approach?

Yes  / No

If no, please explain:

### Question 10

We have proposed not to make deductions from the payment award where there are assets in the name of the child who has died.

Do you agree with a this approach?

Yes  / No

If no, please explain:

## ANNEX B

### Question 11

We have proposed that requests for an FEA re-determination should be made within 31 calendar days of receipt of notification of the original determination. Do you think that is an acceptable time period?

Yes  / No

If no, please explain:

### Question 12

We have proposed that an FEA re-determination should be processed within 15 working days of receipt of a request. Do you think that is an acceptable time period?

Yes  / No

If no, please explain:

### Question 13

Do you have any additional evidence or impacts which are not covered in the EQIA or CRWIA?

### Question 14

Do you have any additional evidence or impacts which are not covered in the draft BRIA?

## ANNEX C

### LINKS TO DOCUMENTS REFERRED TO IN THE CONSULTATION PAPER

- 
- <sup>i</sup> <https://beta.gov.scot/publications/funeral-costs-plan/>
  - <sup>ii</sup> <https://beta.gov.scot/publications/social-security-scotland-bill-policy-paper-funeral-expense-assistance-fea/>
  - <sup>iii</sup> <https://beta.gov.scot/groups/funeral-poverty-and-funeral-expense-assistance-reference-group/>
  - <sup>iv</sup> <https://consult.gov.scot/social-security/social-security-in-scotland/>
  - <sup>v</sup> [http://www.parliament.scot/S5\\_Social\\_Security/Inquiries/20171130\\_FEAllustrativeRegsPolicyNarrative.pdf](http://www.parliament.scot/S5_Social_Security/Inquiries/20171130_FEAllustrativeRegsPolicyNarrative.pdf)
  - <sup>vi</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/105267.aspx>
  - <sup>vii</sup> <http://www.gov.scot/Publications/2017/08/6243>
  - <sup>viii</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630382/social-fund-annual-report-2016-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630382/social-fund-annual-report-2016-2017.pdf)
  - <sup>ix</sup> <https://beta.gov.scot/publications/youve-earned-benefit-uptake-campaign-october-2017-evaluation-report/>
  - <sup>x</sup> <http://www.gov.scot/Publications/2017/08/6243/0>
  - <sup>xi</sup> [http://www.parliament.scot/Social%20Security%20\(Scotland\)%20Bill/SPBill18FMS052017.pdf](http://www.parliament.scot/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf)
  - <sup>xii</sup> [http://www.parliament.scot/Social%20Security%20\(Scotland\)%20Bill/SPBill18FMS052017.pdf](http://www.parliament.scot/Social%20Security%20(Scotland)%20Bill/SPBill18FMS052017.pdf)
  - <sup>xiii</sup> [http://www.parliament.scot/Social%20Security%20\(Scotland\)%20Bill/SPBill18AFMS052018.pdf](http://www.parliament.scot/Social%20Security%20(Scotland)%20Bill/SPBill18AFMS052018.pdf)
  - <sup>xiv</sup> <http://www.legislation.gov.uk/asp/2016/20/contents/enacted>



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