DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Funeral Expense Assistance (Scotland) Regulations 2019

PART 4

Eligibility

Relationship to deceased person

7.—(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(**1**), and

(b) any other relevant circumstances that the applicant brings to their attention.

(3) For the purposes of paragraph (2)(a), instead of section 65(3) to (6) of that Act regard is to be had to—

(a) section 66(3) to (5) (arrangements on death of a child) where the deceased person was under 16 years of age on the day of his or her death,

(b) section 74(3), (7) and (8) in relation to a still-born child.

Multiple applications

8.—(1) Where two or more persons accept responsibility for the expenses of the funeral, and each applies 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 7(2)(a).

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

(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(**2**) or the Social Fund

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(**1**) 2016 asp 20.

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

Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005(**3**), 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

9.—(1) To qualify for funeral expense assistance, the applicant must be ordinarily 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(**4**),

(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) In paragraph (3) the references to Directive 2004/38/EC are to be read as references to that Directive as it forms part of domestic law.

(5) 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(**5**), 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)(**6**).

(6) Paragraph (2)(a) does not apply in respect of the funeral of a still-born child.

Qualifying benefits

10.—(1) To qualify for funeral expense assistance the applicant, or the partner of the applicant, must have been properly awarded in respect of the relevant day—

(a) income support under section 124 of the Social Security Contributions and Benefits Act 1992(**7**),

(b) state pension credit within the meaning given by section 1(1) of the State Pension Credit Act 2002(**8**),

(c) income-based jobseeker's allowance within the meaning of the Jobseekers Act 1995(**9**),

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(**3**) S.I. 2005/506. There are amendments that are not relevant to this regulation.
(**4**) O.J. L.158, 30.4.2004, p.77.
(**5**) 1999 c.33. There are amendments to section 115 that are not relevant to these Regulations.
(**6**) S.I. 2000/636.
(**7**) 1992 c.4.
(**8**) 2002 c.16.
(**9**) 1995 c.18.

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(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(**10**) is included in the award,

(e) child tax credit within the meaning of the Tax Credits Act 2002(**11**),

(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(**12**), or

(h) universal credit under Part 1 of the Welfare Reform Act 2012(**13**).

(2) An applicant, or the partner of the applicant, is not to be regarded as having been properly awarded assistance if—

(a) the award for the relevant day was made in error (whether or not induced by the individual),

(b) the award for the relevant day or the period that includes the relevant day is £0.

(3) In this paragraph "the relevant day" is—

(a) the day the application is received by the Scottish Ministers, or

(b) if applicable, the day nominated by the Scottish Ministers under regulation 5(5).

(4) For the purpose of paragraph (1)(h), the applicant, or the partner of the applicant, is awarded universal credit in respect of the relevant day if—

(a) the assessment period for their award includes the relevant day, or

(b) they had an award of universal credit for the assessment period that ended immediately before the start of the assessment period mentioned in sub-paragraph (a).

(5) In calculating the sum awarded for the purpose of paragraph (2)(b) where a deduction has been made from the award in respect of any liability to another person or by way of a sanction, the sum awarded is the sum that would have been awarded had the deduction not been made.

Estate of deceased person

11.—(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 18 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 are to be considered an asset of the deceased person.

(**10**) S.I. 2002/2005.
(**11**) 2002 c.21.
(**12**) 2007 c.5.
(**13**) 2012 c.5.