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STATUTORY INSTRUMENTS

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**1997 No. 792**

**SOCIAL SECURITY**

**The Social Security (Social Fund and Claims and Payments) (Miscellaneous Amendments) Regulations 1997**

<i>Made</i>	- - - -	<i>12th March 1997</i>
<i>Laid before Parliament</i>		<i>17th March 1997</i>
<i>Coming into force</i>	- -	<i>7th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 138(1) (a) and (4) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and sections 5(1) (a), 189(1), (3) and (4) and 191 of the Social Security Administration Act 1992 (2) and of all other powers enabling him in that behalf, after reference to the Social Security Advisory Committee(3), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Social Fund and Claims and Payments) (Miscellaneous Amendments) Regulations 1997 and shall come into force on 7th April 1997.

(2) In these Regulations, “the General Regulations” means the Social Fund Maternity and Funeral Expenses (General) Regulations 1987(4).

**Amendment of regulation 3 of the General Regulations**

2.—(1) Regulation 3 of the General Regulations(5) (interpretation) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1)–

(a) after the definition of “the Jobseeker’s Allowance Regulations” there shall be inserted the following definition–

““absent parent” means a parent of a child who has died or of a still-born child where–

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(1) 1992 c. 4; section 138 (4) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.  
(2) 1992 c. 5; section 191 is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.  
(3) See section 172(1) of the Social Security Administration Act 1992 (c. 5).  
(4) S.I. 1987.481.  
(5) Regulation 3 was amended by S.I. 1988/36, 1989/379, 1990/580, 1992/2149, 1994/506, 1995/1229 and 1996/1443.

- (a) the parent was not living in the same household with the child at the date of that child's death or at the date the child was still-born; and
  - (b) that child had at the date of death, or would have had, his home with a person who was responsible for that child for the purposes of Part IX of the Social Security Contributions and Benefits Act 1992<sup>(6)</sup>;
- (b) after the definition of "funeral payment" there shall be inserted the following definition—  
 "“immediate family member” means a parent, son or daughter;”;
- (c) after the definition of "occupational pension scheme", there shall be inserted the following definition—  
 "“prescribed time for claiming” means the appropriate period during which a maternity payment or, as the case may be, a funeral payment, may be claimed pursuant to regulation 19 of, and Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987<sup>(6)</sup>”;
- (d) in the definition of "responsible person" for "7(1) (b)" there shall be substituted "7(1) (a)".
- (3) For paragraph (1A) there shall be substituted the following paragraph—  
 "“(1A) For the purposes of Part III of these Regulations, persons are to be treated as members of the same household where those persons—  
 (a) are married to each other and are living in the same residential accommodation, residential care home or nursing home as defined for the purposes of the Income Support Regulations or, as the case may be, of the Jobseeker's Allowance Regulations; or  
 (b) were partners immediately before either or both or any or all of those persons moved permanently into such accommodation or home as is referred to in sub-paragraph (a) above,  
 and that person is or, as the case may be, those persons are resident in such accommodation or home at the date of death of the person in respect of whom a funeral payment is claimed.”.

### **Amendment of regulation 4 of the General Regulations**

3. In regulation 4 of the General Regulations (provision against double payment)—
- (a) at the end of paragraph (2) there shall be added the words "or to persons who have been granted an order in respect of the child in question pursuant to section 30 of the Human Fertilisation and Embryology Act 1990<sup>(7)</sup> (parental orders)";
  - (b) in paragraph (3), after the words "in question" there shall be inserted the words "or in respect of any other funeral expenses arising from the death of the same person".

### **Amendment of regulation 5 of the General Regulations**

4.—(1) Regulation 5 of the General Regulations<sup>(8)</sup> (entitlement to a maternity payment) shall be amended in accordance with the following paragraphs.

- (2) In paragraph (1)—
- (a) at the end of sub-paragraph (b)(ii) for the word "and" there shall be substituted the word "or";

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(6) S.I. 1987/1968; the relevant amending instrument are S.I. 1988/522, 1989/1686, 1991/2741, 1992/247 and 2595, 1993/2113 and 1996/425, 1460 and 2306.

(7) 1990 c. 37.

(8) Regulation 5 was amended by S.I. 1988/36, 1991/2742, 1992/2149 and 1996/1443.

- (b) after sub-paragraph (b)(ii) there shall be inserted the following head—
  - “(iii) the claimant and the claimant’s spouse have been granted an order in respect of a child pursuant to section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders); and”;
- (c) in sub-paragraph (c), for the words from “period” to the end of the sub-paragraph there shall be substituted the words “prescribed time for claiming a maternity payment”.
- (3) After paragraph (2) (c), there shall be added the following sub-paragraph—
  - “(d) where the claim is made after an order referred to in paragraph (1) (b) (iii) has already been granted in respect of a child, £100 in respect of that child.”.

### **Substitution of regulation 7 of the General Regulations**

5. For regulation 7 of the General Regulations<sup>(9)</sup> (entitlement to a funeral payment) there shall be substituted the following regulations—

#### **“Entitlement**

7.—(1) Subject to the following provisions of this regulation, regulation 8 and to Parts IV and V of these Regulations, a social fund payment (referred to in these Regulations as a “funeral payment”) to meet funeral expenses shall be made only where—

- (a) the claimant or his partner (in this Part of these Regulations referred to as “the responsible person”), at the date of the claim for a funeral payment—
  - (i) has an award of income support, income-based jobseeker’s allowance, family credit, disability working allowance, housing benefit or council tax benefit where, in the case of council tax benefit, that benefit is awarded by virtue of the claimant or his partner having fulfilled the conditions of entitlement specified in section 131(3) to (5) of the Social Security Contributions and Benefits Act 1992 (certain conditions for entitlement to council tax benefit)<sup>(10)</sup>; or
  - (ii) is a person to whom (by virtue of subsection (7) of section 131 of that Act) subsection (6) of that section applies where, on a claim for council tax benefit, the conditions of entitlement specified in section 131(3) and (6) for an award of an alternative maximum council tax benefit are fulfilled;
- (b) the funeral of the deceased takes place in the United Kingdom;
- (c) the deceased was ordinarily resident in the United Kingdom at the date of his death;
- (d) the claim is made within the prescribed time for claiming a funeral payment; and
- (e) the claimant or his partner accepts responsibility for those expenses and—
  - (i) the responsible person was the partner of the deceased at the date of death; or
  - (ii) in a case where the deceased was a child or a still-born child and—
    - (aa) there is no absent parent; or
    - (bb) there is an absent parent who, or whose partner, was awarded a benefit to which sub-paragraph (a) above refers at the date of death,

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<sup>(9)</sup> Regulation 7 was amended by S.I. 1988/36, 1993/479, 1995/1229 and 1996/1443.

<sup>(10)</sup> “Council tax benefit” was added to the income-related benefits in Part VII of the Social Security Contributions and Benefits Act 1992 by Schedule 9 to the Local Government Finance Act 1992 (c. 14) and paragraph 4 of that Schedule substituted a new section 131 with respect to council tax benefit in the Social Security Contributions and Benefits Act 1992.

the responsible person was the person or the partner of a person responsible for that child for the purposes of Part IX of the Social Security Contributions and Benefits Act 1992, at the date of death, or, as the case may be, a parent of that still-born child; or

(iii) in a case where (i) and (ii) above do not apply, the responsible person was an immediate family member of the deceased and it is reasonable for the responsible person to accept responsibility for those expenses; or

(iv) in any other case, the responsible person was either—

(aa) a close relative (other than an immediate family member) of the deceased; or

(bb) a close friend of the deceased,

and it is reasonable for the responsible person to accept responsibility for those expenses.

(2) For the purposes of paragraph (1)(e)(iii) and (iv), the deceased shall be treated as having had no partner where the deceased had a partner at the date of death and—

(a) no claim for funeral expenses is made by the partner in respect of the death of the deceased; and

(b) that partner dies before the date upon which the deceased's funeral takes place.

(3) In a case to which paragraph (1)(e) (iii) or (iv) applies and subject to paragraph (4), the responsible person shall not be entitled to a funeral payment under these Regulations where –

(a) there are one or more immediate family members of the deceased (not including any immediate family members who were children at the date of death of the deceased);

(b) neither those immediate family members nor their partners have been awarded a benefit to which paragraph (1) (a) refers; and

(c) any of the immediate family members to which sub-paragraph (b) above refers was not estranged from the deceased at the date of his death.

(4) Paragraph (3) shall not apply to disentitle the responsible person from a funeral payment where the immediate family member to whom that paragraph applies is—

(a) a person who is aged less than 19 and who is attending a full-time course of advanced education as defined in regulation 61 of the Income Support Regulations or, as the case may be, a person aged 19 or over but under pensionable age who is attending a full-time course of study at an educational establishment;

(b) a member of, and fully maintained by, a religious order;

(c) being detained in a prison, remand centre or youth custody institution and either that immediate family member or his partner had been awarded a benefit to which paragraph (1) (a) refers immediately before that immediate family member was so detained; or

(d) a person who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>(11)</sup> or, as the case may be, the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975<sup>(12)</sup> and either that immediate family member or his partner had

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<sup>(11)</sup> S.I. 1975/55; the relevant amending instrument is S.I. 1992/2595.

<sup>(12)</sup> S.R. 1975 No. 109 (N.I.); the relevant amending instrument is S.R. 1992 No. 453.

been awarded a benefit to which paragraph (1)(a) refers immediately before that immediate family member was first regarded as receiving such treatment.

(5) In a case to which paragraph (1)(e)(iii) or (iv) applies, whether it is reasonable for a person to accept responsibility for meeting the expenses of a funeral shall be determined by the nature and extent of that person's contact with the deceased.

(6) Except in a case where paragraph (7) applies, in a case where the deceased had one or more close relatives and the responsible person is a person to whom paragraph (1)(e)(iii) or (iv) applies, if on comparing the nature and extent of any close relative's contact with the deceased and the nature and extent of the responsible person's contact with the deceased, any such close relative was –

- (a) in closer contact with the deceased than the responsible person; or
- (b) in equally close contact with the deceased and neither that close relative nor his partner, if he has one, has been awarded a benefit to which paragraph (1) (a) refers; or
- (c) in equally close contact with the deceased and possesses, together with his partner, if he has one, more capital than the responsible person and his partner and that capital exceeds,
  - (i) where the close relative or his partner is aged 60 or over, £1,000; or
  - (ii) where the close relative and his partner, if he has one, are both aged under 60, £500,

the responsible person shall not be entitled to a funeral payment under these Regulations in respect of those expenses.

(7) Paragraph (6) shall not apply where the close relative who was in closer contact with the deceased than the responsible person or, as the case may be, was in equally close contact with the deceased–

- (a) was a child at the date of death; and
- (b) was the only close relative (not being a child) to whom any of sub-paragraphs (a) to (c) of paragraph (6) applies.

#### **Amount of funeral payment**

**7A.**—(1) Subject to paragraphs (4) and (5), regulation 8 and Part IV of these Regulations, the amount of a funeral payment shall be an amount sufficient to meet any of the costs which fall to be met or have been met by the claimant or his partner or a person acting on their behalf and which are specified in paragraph (2), inclusive of any available discount on those costs allowed by the funeral director or by any other person who arranges the funeral.

- (2) The costs which may be met for the purposes of paragraph (1) are–
  - (a) except where sub-paragraph (b) applies, in the case of a burial –
    - (i) the necessary costs of purchasing a new burial plot for the deceased, together with an exclusive right of burial in that plot;
    - (ii) the necessary costs of the burial;
  - (b) in the case of a cremation–
    - (i) the necessary costs of the cremation, including medical references;
    - (ii) the cost of any necessary registered medical practitioner's certificates;

- (iii) the fee payable for the removal of any device as defined for the purposes of the Active Implantable Medical Devices Regulations 1992<sup>(13)</sup> save that where that removal is carried out by a person who is not a registered medical practitioner, no more than £20 shall be met in respect of that fee;
  - (c) the cost of obtaining any documentation, production of which is necessary in order to release any assets of the deceased which may be deducted from a funeral payment pursuant to regulation 8;
  - (d) where the deceased died at home or away from home and it is necessary to transport the deceased within the United Kingdom in excess of 50 miles to the funeral director's premises or to the place of rest, the reasonable cost of transport in excess of 50 miles;
  - (e) where transport is provided by a vehicle for the coffin and bearers and by one additional vehicle, from the funeral director's premises or the deceased's place of rest to the funeral and—
    - (i) that transportation necessarily exceeds 50 miles; or
    - (ii) that transportation exceeds 50 miles and the cost of that transportation together with the cost of burial in an existing plot does not exceed the cost which would have been incurred under sub-paragraph (a) above and, where appropriate, under head (i) of this sub-paragraph, the reasonable cost of transport in excess of 50 miles;
  - (f) the reasonable expenses of one return journey within the United Kingdom for the responsible person, either for the arrangement of, or attendance at, the funeral;
  - (g) any other funeral expenses which shall not exceed £600 in any case.
- (3) All references in paragraph (2) (d) and (e) to a distance of 50 miles shall be construed as applying to the total distance of the journey referred to in those sub-paragraphs.
- (4) The cost of items and services which may be met under paragraph (2) (a), (d) and (e) shall not be taken to include any element in the cost of those items and services which relates to a requirement of the deceased's religious faith.
- (5) Where items and services have been provided on the death of the deceased under a pre-paid funeral plan or under any analogous arrangement—
- (a) no funeral payment shall be made in respect of items or services referred to in paragraph (2) which have been provided under such a plan or arrangement; and
  - (b) paragraph (2) (g) shall have effect in relation to that particular claim as if for the sum "£600", there were substituted the sum "£100".

### **Amendment of regulation 8 of the General Regulations**

6.—(1) Regulation 8 of the General Regulations<sup>(14)</sup> (deductions from an award of a funeral payment) shall be amended in accordance with the following paragraphs.

- (2) After "**8.**" there shall be inserted "-(1)".
- (3) In the renumbered paragraph (1) –
  - (a) before the words "There shall be deducted" there shall be inserted the words "Subject to paragraph (2).";
  - (b) in sub-paragraph (c) –

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<sup>(13)</sup> S.I. 1992/3146 to which there is an amendment which is not relevant to these Regulations.

<sup>(14)</sup> Regulation 8 was amended by S.I. 1994/506 and 1996/1443

- (i) after the words “any contribution” there shall be inserted the words “towards funeral expenses”;
- (ii) the words from “, but only to the extent” to the end of the sub-paragraph shall be omitted;
- (c) for sub-paragraph (e) there shall be substituted the following sub-paragraph–
  - “(e) in relation to a pre-paid funeral plan or any analogous arrangement–
    - (i) where the plan or arrangement had not been paid for in full prior to the death of the deceased, the amount of any sum payable under that plan or arrangement in order to meet the deceased’s funeral expenses;
    - (ii) where the plan or arrangement had been paid for in full prior to the death of the deceased, the amount of any allowance paid under that plan or arrangement in respect of funeral expenses.”.
- (4) After paragraph (1) there shall be added the following paragraph –
  - “(2) The amount of any payment made under the Macfarlane Trust, the Macfarlane (Special Payment) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund or the Eileen Trust shall be disregarded from any deduction made under this regulation and for the purpose of this paragraph, “the Macfarlane Trust”, “the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No. 2) Trust”, “the Fund” and “the Eileen Trust” shall have the same meaning as in regulation 2(1) of the Income Support Regulations.”.

#### **Amendment of regulation 9 of the General Regulations**

- 7. In regulation 9 of the General Regulations (effect of capital)–
  - (a) in paragraph (2) (a), after the words “entitlement to income support” there shall be inserted the words “or, as the case may be, to income-based jobseeker’s allowance”;
  - (b) in paragraph (3) (c), for “7(3) and (4)” there shall be substituted “7A(2)”.

#### **Amendment of the Social Security (Claims and Payments) Regulations**

8. For the entry in column (2) of paragraph 8 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987(15) (prescribed time for claiming a maternity payment), there shall be substituted the following entry–

- “The period beginning 11 weeks before the first day of the expected week of confinement and ending 3 months after–
- (a) the actual date of confinement; or
  - (b) in the case of an adopted child, the date of the adoption order; or
  - (c) in the case of a child in respect of whom an order has been granted pursuant to section 30 of the Human Fertilisation and Embryology Act(16), the date of that Order.”.

#### **Transitional provision**

9. Where, in respect of a death which occurs before 7th April 1997, a claim is made for funeral expenses from the social fund in respect of a funeral which takes place on or before 7th July 1997, regulations 2, 3(b), 5, 6 and 7 of these Regulations shall not have effect with respect to that claim.

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(15) S.I. 1987/1968 to which there are amendments which are not relevant to these Regulations.

(16) 1990 c. 37

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Signed by authority of the Secretary of State for Social Security.

12th March 1997

*Roger Evans*  
Parliamentary Under-Secretary of State,  
Department of Social Security



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## EXPLANATORY NOTE

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

These Regulations amend the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 (S.I.1987/481 as amended) (“the General Regulations”) and the Social Security (Claims and Payments) Regulations 1987 (S.I.1987/1968 as amended) (“the Claims and Payments Regulations”) in so far as those Regulations relate to claims for payment of maternity and funeral expenses.

In particular, regulation 5 codifies the provisions of the General Regulations whereby the conditions for entitlement to, and payment of, funeral payments are prescribed.

In addition, these Regulations amend the General Regulations by—

- providing simplified criteria relating to which funeral costs may be met (regulation 5(in relation to the new regulation 7A));
- providing that only one funeral payment award may be made in respect of each death (regulation 3(b));
- providing that maternity payments may be made in respect of children in respect of whom there has been a parental order under the Human Fertilisation and Embryology Act 1990 (regulation 4(2) (c) and (3)) and that such payments may be made both to the birth parents and to the persons granted a parental order (regulation 3(a));
- providing that no funeral payment may be made in certain circumstances, where there are immediate family members or absent parents of the deceased (as defined for the purpose of the General Regulations) (regulations 2(2) (a) and (b) and 5 (in relation to the new regulation 7(1) (e) (ii) and (iii), (3) and (4));
- treating the deceased, in certain circumstances, as if he had no partner at the date of death (regulation 5(in relation to the new regulation 7(2)));
- providing that where the deceased is a child or a still-born child, the responsible person shall, unless there is an absent parent who is not in receipt of a qualifying benefit, be the person responsible for that child (regulation 5(in relation to the new regulation 7(1) (e) (ii)));
- introducing new rules as to what types of payment may be disregarded when making deductions from funeral payments and clarifying what is meant by a funeral plan deducted from a funeral payment and providing that certain amounts should be disregarded for the purpose of such deductions (regulation 6);
- clarifying the position relating to partners of claimants who are in long-term care (regulation 2(3));
- correcting technical errors relating to the qualifying benefits for a funeral payment and to rules on capital and making consequential amendments (regulations 2(2) (c) and (d), 5 (in relation to the new regulation 7(1) (a) (i)) and 7).

These Regulations also amend the Claims and Payments Regulations by amending the period during which claims for maternity payments may be made (regulation 8).

Regulation 9 provides a transitional provision relating to certain provisions in respect of claims for funeral payments in respect of deaths occurring before 7th April 1997.

The Report of the Social Security Advisory Committee dated 13th February 1997 on the proposals referred to them in these Regulations, together with a statement showing the extent to which these Regulations give effect to the Recommendations of the Committee, and in so far as they do not give

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effect to them, the reasons why not, are contained in Command Paper Cm 3585 , published by the Stationery Office Ltd.

These Regulations do not impose a charge on business.