

EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND FUNERAL EXPENSES AMENDMENT REGULATIONS 2018

2018 No. 61

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the provisions relating to funeral payments from the Social Fund.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Social Fund is constituted under Part 8 of the Social Security Contributions and Benefits Act 1992¹. The Social Fund Maternity and Funeral Expenses (General) Regulations 2005² made under that Part set out the conditions for eligibility and payment of payments to meet funeral costs for those in receipt of certain means-tested benefits. The Social Security (Claims and Payments) Regulations 1987³ set out the manner in which and the time limits within which claims for such payments are to be made.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain. Corresponding regulations will need to be made in Northern Ireland

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

¹ <http://www.legislation.gov.uk/ukpga/1992/4/part/VIII/enacted>

² <http://www.legislation.gov.uk/uksi/2005/3061/contents/made>

³ <http://www.legislation.gov.uk/uksi/1987/1968/contents/made>

7. Policy background

What is being done and why

- 7.1 The Social Fund helps eligible benefit claimants with certain one off or occasional expenses through Cold Weather Payments, Funeral Expenses Payments, Sure Start Maternity Grants and Budgeting Loans. Social Fund Funeral Expenses Payments helps eligible claimants with the cost of arranging a funeral. Funeral Expenses Payments meet the ‘necessary costs’ of a cremation or burial; these are broadly, the cost of purchasing a grave with exclusive burial rights, basic crematorium or burial fees, the costs of necessary documentation and (in some cases) transport of the deceased’s body. An additional discretionary element can be used to help pay for items such as flowers, car hire, the funeral ceremony and funeral director charges for making the arrangements. The discretionary element is capped at £700 (or £120 where the claimant is provided with some items or services under a pre-paid funeral plan). These amendments are designed to clarify eligibility and to simplify the application process.
- 7.2 Currently, applications for a funeral expenses payment must be made within three months of the date of the funeral and applicants and funeral directors must submit hard copies of any evidence required in support of a claim. These regulations extend the application limit to six months and allow supporting evidence, for example, funeral directors’ invoices, to be submitted electronically.
- 7.3 These regulations also exempt a person living in a care home, and who is funded by a local authority, from being assigned responsible person status in respect of making funeral arrangements. Currently, a claim for a funeral expenses payment can be refused because the deceased has an immediate relative other than the applicant, who is not receiving a qualifying benefit and to whom responsibility would be assigned despite the fact that they are in a care home funded by their local authority and unlikely to be able to pay for the funeral.
- 7.4 The terminology used in the current regulations has created confusion around what expenses can be covered as part of ‘the necessary costs’ of a funeral. In particular, the use of the term ‘exclusive rights of burial’ has meant that funeral expenses payments have only been paid in respect of burial plots that have been granted for an infinite period of time. Similarly, the use of the term ‘purchase’ has created a lack of clarity around whether or not there is a legal right of ‘purchase’ relating to a burial plot. These regulations amend the current provisions to ensure that the cost of all burials are met, irrespective of whether or not the plot has been granted exclusively to a single owner.
- 7.5 The current provision covers the costs of the fee payable to medical doctors for the completion of a cremation form where the deceased is to be cremated. These regulations amend this to allow the costs of all death certification fees to be covered should reforms be introduced in the future that require such certification for burials as well as for cremations.
- 7.6 Currently, applicants for a funeral expenses payment are required to declare any contributions they have received from charities, friends or relatives towards the funeral costs; and any such payments are deducted from the amount payable. These regulations allow applicants to receive such contributions without them being deducted from the total value of their award.

Consolidation

- 7.7 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archives’ website legislation.gov.uk.

8. Consultation outcome

The Department of Work and Pensions issued a public consultation on its proposed changes to the Funeral Expenses Payments regulations on 5 July 2017. The consultation, which closed on 21 August 2017, attracted 73 responses from individual members of the public, funeral directors, charities and organisations representing the funeral industry. The responses received were overwhelmingly in favour of each individual proposal, although a significant minority (whilst agreeing with the proposed changes) also argued for more fundamental reform in particular to address the issue of adequacy of discretionary element payable towards additional costs of a funeral. The Department published its response to the consultation on 3 November⁴.

- 8.1 A draft of these Regulations has been considered by the Social Security Advisory Committee. The Committee agreed that the Regulations should not be referred to it.

9. Guidance

- 9.1 Appropriate amendments to the current published guidance and to the operational guidance issued to staff in the Department for Work and Pensions will be issued before these changes come into force.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Department for Work and Pensions routinely reviews and monitors the effect of policy changes. There are, however, no specific plans to evaluate the impact of these regulations.

13. Contact

- 13.1 The Social Fund Policy Team at the Department for Work and Pensions (email: gwenllian.williams@dwp.gsi.gov.uk. Telephone: 07881 8441115) can answer any queries relating to this statutory instrument.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656887/consultation-response-reforms-to-funeral-expenses-payments.pdf