
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Funeral Expense Assistance (Scotland) Regulations 2019

PART 3

Procedural matters

Applications

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

- (a) applies within the period described in regulation 5, and
- (b) meets the eligibility conditions prescribed in these Regulations.

(2) Regulation 4 sets out circumstances in which the Scottish Ministers are to determine an individual's entitlement to funeral expense assistance without receiving an application.

(3) Regulations 7 and 8 describe eligibility conditions relating to the applicant's relationship to the deceased person and multiple applications.

(4) Regulation 9 describes eligibility conditions relating to the applicant's residence, the last residence of the deceased person and the place where the funeral takes place.

(5) Regulations 10 and 11 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.

(6) An application is to be treated as made—

- (a) on the day it is received by the Scottish Ministers, or
- (b) if applicable, on the day nominated by the Scottish Ministers under regulation 5(5).

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

- (a) made to the Scottish Ministers 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.

Determinations without application

4.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to funeral expense assistance without receiving an application where—

- (a) they have previously made a determination of the individual's entitlement to that assistance ("the original determination"),
- (b) they establish that due to an official error the original determination was wrongly made resulting in the individual—

- (i) not being given funeral expense assistance for which the individual was eligible, or
- (ii) being given less such assistance than that to which the individual was entitled,

- (c) the Scottish Ministers are not considering a request for re-determination of the individual's entitlement to such assistance, and
 - (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers' determination of the individual's entitlement to such assistance.
- (2) The Scottish Ministers are also to determine an individual's entitlement to funeral expense assistance without receiving an application where—
- (a) a determination has previously been made that the individual is not entitled to that assistance ("the original determination"), and
 - (b) the Scottish Ministers establish that—
 - (i) following an appeal, a backdated award of assistance described in regulation 10(1) has been made, and
 - (ii) had that award been made before the original determination, a determination that the individual is entitled to funeral expense assistance would have been made instead.
- (3) In making a determination required by paragraph (1) or (2) the Scottish Ministers are to use—
- (a) the information provided in the application that led to the original determination, and
 - (b) any other information they obtained in connection with that application.
- (4) Where a determination is to be, or has been, made without an application by virtue of this regulation, references in these Regulations to the day the application is made are to be read as references to the day the application that led to the original determination was made.
- (5) In paragraph (1) "official error" means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone not so acting.

Period for applications

- 5.—(1) A person is not entitled to funeral expense assistance unless an application for that assistance is made within a period starting when the person whose funeral is being arranged dies and ending as calculated in paragraphs (3) and (4) ("the period for applications").
- (2) No application for funeral expense assistance may be made while the person whose funeral is being arranged is alive.
- (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, unless paragraph (5) applies.
- (4) In calculating the end of the period for applications 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.
- (5) The Scottish Ministers may nominate the date on which an application will be treated as made for the purposes of regulation 3(6)(b) if—
- (a) the award of assistance described in regulation 10(1) that the applicant is relying on to meet that eligibility condition is a backdated award,
 - (b) the backdated award is an award of assistance for—
 - (i) a day that falls within the period for applications, or
 - (ii) a period that includes at least 1 day that falls within the period for applications, and
 - (c) the application is received by the Scottish Ministers—
 - (i) not more than 20 working days after the last day of the period for applications, and
 - (ii) within 3 months of the applicant being informed of the backdated award by or on behalf of the public authority who made it.

- (6) The date nominated by the Scottish Ministers under paragraph (5)—
 - (a) must be a day for which the backdated award is made, and
 - (b) must not be a day that falls outside the period for applications.

Periods for redetermination requests

6.—(1) The period for requesting a re-determination of entitlement to funeral expense assistance, under section 41 of the Social Security (Scotland) Act 2018, is 31 days beginning with the day that the applicant is informed, in accordance with section 40 of that Act, of the right to make the request.

(2) Where such a request is validly made, the period allowed for re-determination (within the meaning of section 43 of that Act) is 16 working days beginning with—

- (a) the day the request is received by the Scottish Ministers, or
- (b) where the request is received by the Scottish Ministers later than the period prescribed by paragraph (1), the day on which the Scottish Ministers, or on appeal the First-tier Tribunal for Scotland, decide that the applicant has a good reason for not requesting the re-determination sooner.