POLICY NOTE

THE FUNERAL EXPENSE ASSISTANCE (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 34 and 95 of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Summary Box

These regulations make changes to the Funeral Expense Assistance Regulations which set out the rules and eligibility criteria for Funeral Expense Assistance, also referred to as Funeral Support Payment.

The changes will support the continuous improvement of Funeral Support Payment and will future proof the regulations to allow Funeral Support Payment to be awarded for a funeral involving alkaline hydrolysis.

Policy Objectives

The purpose of these regulations is to introduce several improvements that will support bereaved people and reduce the burden of debt a person may face when paying for a funeral. These changes are a result of varying funeral trends, appeals and lessons learned since Funeral Support Payment was launched in September 2019. The changes are set out below:

- Introducing a reasonability test when a person has a funeral outwith the area in which they resided. This will provide eligible people with help towards funeral costs based on what is reasonable rather than where they lived.
- Extending provision to allow Funeral Support Payment to be awarded in exceptional circumstances if a funeral is held outwith the UK and an award is not allowable under current regulations. Existing provision for EU/EEA and Swiss Nationals will be retained.
- Ensuring that a person who would have been entitled to support for funerals abroad prior to the UK's withdrawal from the EU will continue to be entitled. This includes Irish citizens and EU/EEA or Swiss nationals who have obtained leave to remain in the UK by means other than the EU settlement scheme, and those who have applied under the EU settlement scheme and are awaiting a decision. Also included are family members in the first 3 months of residence.
- Removing the provision to deny an application due to sufficient funds available to cover funeral costs and introducing a change to deduct any available assets of the deceased which can be used for funeral costs from the award of Funeral Support Payment.

- Amending the definition of funeral to include provision for means of disposal of human remains by alkaline hydrolysis. Alkaline hydrolysis is available in some countries outside of the UK. If alkaline hydrolysis is regulated in Scotland then people who choose this method will be eligible for Funeral Support Payment, assuming all other eligibility is met.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Funeral Expense Assistance (Scotland) Amendment Regulations is compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

Each EU member state has its own social security laws and EU rules co-ordinate these separate social security systems between member states to support freedom of movement. To help maintain the standards set these regulations will ensure people with protected rights after EU exit on 31 December 2020, who were eligible to support for a funeral abroad, will continue to be eligible. This includes Irish citizens with acquired rights and EU/EEA or Swiss nationals who have obtained leave to remain in the UK by means other than the EU settlement scheme, a person who is a joining family member (within the meaning of the Withdrawal Agreement) and those who have made a valid application under the EU settlement scheme and are awaiting a decision.

Consultation

The following bodies have been consulted on the changes to the Funeral Support Payment regulations.

<u>The Scottish Commission on Social Security</u>

The Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS) under sections 22 and 97 of the Social Security (Scotland) Act 2018. SCoSS shared their scrutiny report on 11 June 2024. The Scottish Government's response will accompany these regulations.

As a result of that consultation the following general themes emerged:

- The need to develop suitable guidance, specifically for funerals abroad.
- The need to gather data to monitor and assess the impact of the changes.

and as a result :

- Social Security Scotland will produce robust guidance to accompany the changes
- Relevant data will be captured and analysed within an agreed timescale after the changes are made.

Stakeholder Engagement

A formal consultation and extensive stakeholder engagement was undertaken as part of the development of the initial regulations establishing Funeral Support Payment. The consultation ran between 17 May and 23 August 2018. This involved a variety of organisations and individuals with a range of knowledge and experience.

A formal consultation was not carried out for these regulations but we consulted extensively with a wide range of stakeholders, taking views into account in the development of this policy. Stakeholder engagement included members of the Funeral Poverty and Funeral Support Payment reference group which comprises of funeral industry experts, third sector and local government representatives.

Impact Assessments

The following impact assessments have been completed on the draft SSI:

- An Equalities Impact Assessment
- A Business and Regulatory Impact Assessment
- A Fairer Scotland Duty Impact Assessment
- An Islands Communities Impact Assessment
- A Children's Rights and Wellbeing Impact Assessment

Stakeholders are supportive of the changes and are content these amendments help ensure policy intent is met.

A Data Protection Impact Assessment was not required for this set of amendment regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and the impact of these policies on business is limited. The amendments will have a small but positive impact on businesses. Work will continue with stakeholders to identify any potential negative consequences after implementation.

The Scottish Government does not believe that the amendments to FSP will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, elsewhere in Europe or the rest of the world.

The Scottish Fiscal Commission have confirmed they do not anticipate the changes proposed by these amendments will create a significant change in spending.

Scottish Government
Social Security Directorate

September 2024