POLICY NOTE

THE FUNERAL EXPENSE ASSISTANCE (SCOTLAND) REGULATIONS 2019

SSI 2019/292

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 34, 41(4)(a), 43(5), 52 of the Social Security (Scotland) Act 2018. Section 96(2) of that Act makes the instrument subject to the affirmative procedure; section 98(1) of that Act disapplies any requirement to consult with the Scottish Commission on Social Security before laying the draft instrument.

PURPOSE

When implemented these regulations on Funeral Expense Assistance (FEA) will provide a duty on Scottish Ministers to deliver a one-off payment to support people on certain benefits or tax credits by providing a contribution towards the cost of a funeral. FEA is intended to help improve the outcomes for bereaved families or friends by reducing the burden of debt they may face when paying for a funeral.

The regulations provide detailed rules relating to the FEA. They include provision for eligibility, including residence of both the applicant and the deceased; what assistance is available, and when to apply. The regulations also include provision for timescales for the processing of redeterminations and certain issues of process relating to application dates. Further details will be set out in operational guidance.

POLICY OBJECTIVES

Section 34 and schedule 8 of the Social Security (Scotland) Act 2018 make provision for the FEA and require that Scottish Ministers in making regulations must: -

- base eligibility for entitlement on one or more of the seven primary eligibility criteria (i.e. location of the funeral; relationship with the deceased; value of the deceased's estate; residence and presence; financial circumstances; receipt of, or eligibility for, other types of State assistance; and application within specified period);
- define the meaning of "funeral" for the purpose of determining entitlement to FEA; and
- set out the assistance to be given.

CONSULTATION

The FEA & Funeral Poverty Reference Group

The FEA & Funeral Poverty Reference Group was established in March 2016 to help gather evidence, bring a variety of informed perspectives and provide feedback on proposals. Membership and minutes of the meetings are available on the Scottish Government website[1].

[1] FEA & Funeral Poverty Reference Group - https://www.gov.scot/groups/funeral-poverty-and-funeral-expense-assistance-reference-group/

A new Future for Social Security in Scotland

The consultation A new Future for Social Security in Scotland ran between 29 July and 30 October 2016[2]. The Funeral Payments section sought views specifically on how individuals thought the new Scottish benefit could achieve improvements such as, reaching more people; and a more predictable eligibility entitlement so that people can make better informed decisions when they are arranging a funeral. This section of the consultation received over 150 responses from both individuals and organisations. A summary of these responses can be found in the independent analysis report of the written responses to the consultation on Social Security in Scotland from page 179[3]. The views expressed within these consultation responses helped shape the initial discussions and proposals for FEA that were taken forward with the FEA & Funeral Poverty Reference Group. For example, in relation to simplifying the eligibility criteria around the applicant's relationship to the deceased, some consultation responses proposed that the nearest relative test used in the Human Tissue (Scotland) Act 2006 (which was subsequently used in the Burial and Cremation (Scotland) Act 2016) would be appropriate to use in relation to this benefit to determine responsibility for funeral costs based on who the nearest relative is. The Scottish Government has incorporated this test into FEA, while still retaining the flexibility to consider particular circumstances.

FEA Illustrative Regulations

Illustrative regulations for FEA were shared with the Social Security Committee and Delegated Powers and Law Reform Committee of the Scottish Parliament on 30 November 2017. The purpose of sharing illustrative regulations during the passage of the Social Security (Scotland) Bill was to inform the Committee how the Scottish Government intended to use the powers proposed in the Bill. These illustrative regulations were subsequently published on the Parliament's website and shared, with a request for feedback, with a range of stakeholders including the FEA & Funeral Poverty Reference Group.

Draft Regulations on FEA

Between 17 May and 23 August 2018 the Scottish Government undertook a 14 week consultation[4] on the draft regulations for FEA. There were 41 separate responses received and all but 2 were content for their response to be published[5]. In addition a consultation event was organised with the Scottish Ethnic Minority Older People Forum and was attended by 85 people from different faith, cultural and ethnic backgrounds. An independent consultation report[6] was also published summarising the issues raised. A response to the consultation

---

[2] A New Future for Social Security, Consultation on Social Security in Scotland - https://consult.gov.scot/social-security/social-security-in-scotland/supporting_documents/Consultation%20on%20social%20security%20in%20Scotland%20%20full%20version.pdf

[3] Analysis of Written Responses to the Consultation on Social Security in Scotland - https://www2.gov.scot/Resource/0051/00514351.pdf

[4] Consultation on Funeral Expense Assistance Regulations - https://consult.gov.scot/social-security/funeral-expense-assistance/supporting_documents/00535472.pdf

[5] Published responses to the FEA consultation - https://consult.gov.scot/social-security/funeral-expense-assistance/consultation/published_select_respondent

[6] Funeral Expense Assistance Regulations: consultation analysis - https://www.gov.scot/publications/funeral-expense-assistance-regulations-analysis-consultation-responses/

report by the Scottish Government is published alongside these regulations[7]. The views expressed in the consultation responses helped further develop the FEA policy intent that is now being taken forward within these regulations. For example, the issues below drew on comments made in the responses, on:

- residency of the applicant – the proposal that applicants should be resident in Scotland was supported, however, some concerns were raised about the level of evidence required to demonstrate habitual vs ordinary residency. Those on a qualifying benefit will now have to demonstrate only ordinary residence in Scotland, rather than habitual residence.
- Universal Credit (UC) **-** eligibility for UC will be assessed over a 2 month period. Where an applicant has had their award reduced to zero because of a sanction or debt recovery, the applicant will still be eligible for FEA.
- relationship to the deceased person – the proposal in the consultation paper was supported that applicants must usually have the nearest relationship to the person who has died so we have decided to use this as part of the process for FEA while still retaining flexibility to consider difficult family circumstances.

In parallel to the consultation, work has been progressed to develop the service to deliver FEA and some additions have been made to the regulations to include elements that is anticipated will make smooth the process for applicants in specific circumstances. For example, "treat as made date" for applications where the qualifying benefit is backdated, and provisions to make a determination without an application in the event of agency error.

The Social Security Committee

The Committee took evidence on the draft FEA regulations on 21 June 2018, during the consultation period. The Committee drew the attention of the then Minister for Social Security to the points made by stakeholders[8].

Experience Panel

We have received, and are continuing to take, views from Experience Panel members and other stakeholders on their experience, the design of the application form, and on the service that will deliver FEA. A summary of the initial research findings and user research for FEA will be published in spring in 2019.

IMPACT ASSESSMENTS

The following impact assessments have been completed and are published on the Scottish Government website:

- Business Regulatory Impact Assessment[9];
- Equalities Impact Assessment[10];

---

[7] Scottish Government Response to the FEA Consultation – http://www.gov.scot/ISBN/9781787814738
[8] Social Security Committee Convener's letter to the Minister for Social Security - http://www.parliament.scot/S5_Social_Security/General%20Documents/20180626_ConvToMin_FuneralExpenseAssistance.pdf
[9] Business Regulatory Impact Assessment - http://www.gov.scot/ISBN/9781787814752
[10] Equality Impact Assessment Results - http://www.gov.scot/ISBN/9781787814745

- Fairer Scotland Duty Assessment[11]; and
- Islands Impact Assessment[12].

A Data Protection impact assessment will be published in 2019 when FEA is launched and the service delivery process is complete.

FINANCIAL EFFECTS

The Scottish Government's decision to widen eligibility and make other changes to improve the benefit for FEA compared to the Department for Work and Pensions (DWP) Funeral Expenses Payment (FEP) is expected to support people who would have otherwise have received no support at all under the current UK Government system. This will reduce the number of families facing debt as a result of arranging a funeral that they cannot afford.

The Scottish Fiscal Commission (SFC) is responsible for producing independent forecasts for devolved social security expenditure. For FEA, the SFC published forecasts alongside the Budget on 12 December 2018[13]. FEA represents an additional investment by the Scottish Government in comparison to current DWP FEP. Based on SFC forecasts, it is estimated that around 4,400 people will receive an FEA payment during the first full year of operation. This will result in expenditure of over £6 million in the first year, around £2 million more than for FEP.

The SFC forecasts that the number of people who will be eligible for FEA will be around 40% higher than those eligible under FEP at present, and initially expects that 53% of those eligible will receive an FEA payment (based on average take-up rates for FEP over the last three years).

Administration costs for FEA form part of wider financial planning for Social Security Scotland.

Scottish Government
Social Security Directorate
January 2019

[11] Fairer Scotland Duty - http://www.gov.scot/ISBN/9781787814769
[12] Islands Impact Assessment Summary - http://www.gov.scot/ISBN/9781787814776
[13] The Scottish Fiscal Commission Budget published 12 December 2018 - http://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts/scotlands-economic-and-fiscal-forecasts-december-2018/