EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND (CHILDREN'S FUNERAL FUND FOR ENGLAND) REGULATIONS 2019

2019 No. 1064

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to establish the Children's Funeral Fund for England ("the CFF").

2.2 Under the CFF arrangements, bereaved parents, guardians or carers will not pay the fees charged for a cremation or burial of a child under the age of 18, nor the associated expenses stipulated in the instrument. Rather these will be provided free at the point of need and regardless of the recipient's means.

2.3 The instrument provides for burial authorities and cremation authorities to apply to the CFF for reimbursement of the fees which would otherwise be charged for the provision of the burial or cremation of an eligible child, as stipulated in Regulation 4. It also provides for funeral directors or other persons responsible for arranging the burial or cremation of a child to apply for reimbursement of the associated expenses stipulated in Regulation 5.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The CFF will run in parallel with the Social Fund Funeral Expenses Payment (FEP) scheme, which enables persons on qualifying benefits to apply for prescribed financial support with regard to a burial or cremation. Both this instrument and the FEP scheme guidance (as amended) preclude a claim being made to both schemes for the same item or service.

3.2 Both the Welsh Government and the Scottish Government have established schemes, under devolved powers, to make financial support available to providers of burial and cremation for children. Provision will be available in England, Wales and Scotland under the arrangements applying in the jurisdiction in which the burial or cremation takes place.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales, except for the two consequential provisions which amend Regulations that extend to Scotland also. When the Scottish version of FEP is expected to open for applications on 5th August 2019, the consequential provisions in this regulation will have no effect in Scottish law.

4.2 The territorial application of this instrument is England.

4.3 Both the Welsh Government and the Scottish Government have established schemes, under devolved powers, to make financial support available to providers of burial and cremation for children.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Prime Minister announced the establishment of the CFF on 1 April 2018. The announcement followed a cross-party parliamentary campaign led by Carolyn Harris MP (Swansea East, Labour) for a fund to spare bereaved parents the additional distress of having to meet the cost of their child's funeral at an extremely difficult time.

6.2 At Prime Minister's Questions on 27 February 2019, the Prime Minister committed to implementing the CFF by the summer of 2019. This commitment was reiterated by the Justice Minister, Edward Argar MP, in responding to an Adjournment Debate on 1 May which was tabled by Carolyn Harris MP.

7. Policy background

What is being done and why?

7.1 The CFF is to be delivered as part of the Social Fund under powers in section 138 of the Social Security Contributions and Benefits Act 1992 (the "1992 Act"). The 1992 Act provides for prescribed payments from the Social Fund for stipulated maternity, cold weather, winter fuel and funeral expenses in defined circumstances, and for payments to a third party for the provision of goods or services to the applicant.

7.2 Annually, in England there are approximately 3,800 deaths of children from birth up to and including age 17, and approximately 2,700 post-24 week stillbirths. The CFF is part of a package of measures delivering the Government's commitment to ensure that all parents who lose a child are given the support they need. The CFF will contribute to this support by relieving bereaved parents of the stress of having to finance the burial or cremation of their child.

7.3 The purpose of this instrument is to ensure that the stipulated fees charged by burial and cremation authorities for the costs incurred in the burial and cremation of a child, and the stipulated associated expenses, are provided for by Government funding, enabling bereaved parents to access these goods and services free at the point of need.

7.4 The Government believes that legislation offers the only means of achieving comprehensive geographical coverage of provision, securing compliance from the sector, and establishing long term sustainability for these arrangements. Self-

regulatory practices, for example through a memorandum of understanding, could not be relied upon to attain these key objectives, given the number of small business providers for whom it may not be viable to waive charges for the provision of the goods and services covered by the CFF under these arrangements.

7.5 To minimise the emotional and financial burden for the bereaved, the scheme has been developed so that, in the main, providers of these goods and services (burial authorities, cremation authorities and funeral directors) will apply to the CFF for reimbursement of the expenses arising from their provision.

7.6 If the person responsible for organising the burial or cremation chooses not to use a funeral director but makes the funeral arrangements themselves, the instrument also enables them to claim directly for those associated expenses provided for by the CFF which a funeral director would normally handle (see Regulation 5).

7.7 In keeping with the spirit of the scheme, this instrument reflects a minimal approach with regard to eligibility requirements (see Regulation 3), the conditions being only that the child is under 18 at the time of death or is stillborn after the 24th week of pregnancy, and that the burial or cremation takes place in England. The residency or nationality of the deceased child, or of the person responsible for organising the burial or cremation, are not relevant in determining eligibility.

7.8 The announcement in April 2018 of the intention to establish the CFF was received positively in the media and by stakeholders, with key providers of funeral services voicing their support for the aims of the scheme. Since the announcement, there has been sustained interest in the development and implementation of the scheme, both in the media and in Parliament.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 It is not intended to consolidate the Regulations at this time. In due course changes will appear on the legislation.gov.uk website.

10. Consultation outcome

10.1 This measure has significant cross-party Parliamentary support, as demonstrated by an Early Day Motion in the last Parliament, a cross-party letter to the Prime Minister in January 2018, and a number of Parliamentary Questions and debates.

10.2 During the process of policy development, the Government engaged with relevant Government Departments, the Devolved Administrations, key stakeholder organisations and industry representatives.

10.3 Stakeholders have welcomed the Government's decision to offer practical support to bereaved families at such a distressing time. The policy is complemented by the industry's own continued support for bereaved families through, for example, provision of wider child funeral packages either free of charge or at a reduced price.

11. Guidance

11.1 Technical guidance setting out the claims process for users will be made available online.

12. Impact

12.1 In view of the fact that this measure is not a regulatory provision and it does not create any unfunded burdens to either business or public sector organisations, an economic Impact Assessment has not been prepared for this instrument. The main costs and benefits associated with this policy are outlined below.

12.2 The primary beneficiaries of the CFF will be bereaved parents, guardians or carers as they will no longer have to pay the fees charged for a cremation or burial of a child under the age of 18, or the associated expenses stipulated in the instrument. Rather these will be provided free at the point of need and regardless of the recipient's means.

12.3 There were around 2,700 stillbirths and 3,800 deaths of children under the age of 18 in England in 2017. These figures have remained relatively stable over the last five years.

12.4 Based on the above statistics, and if all bereaved parents, guardians or carers were otherwise charged for a cremation or burial and the other associated expenses included under the CFF, the Government estimate that the savings for these families will be between £7m to £12.5m pa. This range reflects the different fees associated with burials and cremations.

12.5 The above range is an upper estimate for two reasons. Firstly, some providers currently waive part or all of their fees and expenses in the case of the death of a child. It has not, however, been possible to estimate accurately the exact proportion of fees that are currently being waived. Secondly, some of the families, guardians and carers of children who die before the age of 18 will be able to access the Social Fund Funeral Expenses Payment if they are in receipt of the relevant qualifying benefits. The Government is working with stakeholders to ensure that providers clearly communicate the options available to families in terms of financing their child's funeral, and that the provision of both the CFF and, if relevant, the FEP schemes are made clear.

12.6 Linked to the above, those cremation/burial authorities and funeral directors who currently waive their fees in the case of the death of a child may benefit from the CFF if they now choose to claim this money back from the CFF. However, it is also important to bear in mind that some of the larger providers (representing about 30% of providers) have indicated that they will continue to offer this provision free of charge. It has not been possible to estimate accurately the proportion of providers who would carry on waiving their fees after the introduction of this scheme and not seek reimbursement from the CFF.

12.7 Other benefits include the alleviation of some of the additional stress/anxiety that bereaved parents may experience as a result of the financial difficulties they may face in paying for burial or cremation fees and expenses. The CFF will also address the existing anomaly of some providers charging for these fees and expenses whilst others do not. The establishment of the CFF ensures comprehensive geographical coverage of provision, and long-term sustainability for these arrangements.

12.8 The costs of the CFF will fall to Government. The estimated cost ranges from £8.5m to £14m pa. This includes the £7m to £12.5m pa reimbursed to parents, guardians or carers to cover burial or cremation fees and the other associated expenses stipulated under the CFF and around £1.5m pa in administration costs. There will also be some small one-off set-up costs. The Government expects the majority of these latter costs will be covered by the £1.5m administrative budget allocated to the first financial year. The reason for this is that the delivery of the policy in its first year does not cover the full financial year 2019/20.

12.9 Other non-monetised costs include a small opportunity cost to burial and cremation authorities and funeral directors stemming from the time required to apply to the CFF for the reimbursement of the fees and expenses included under the CFF. The application process will be designed in a manner that minimises the time required to apply for reimbursement.

12.10 In summary, the CFF is mainly a transfer from the general tax payer to bereaved parents, guardians or carers of deceased children under the age of 18. There will, however, also be some net administrative and set-up costs. However, the Government expects that the alleviation of some of the additional stress/anxiety that families may suffer due to any difficulties they face in financing the burial or cremation will outweigh those costs.

12.11 An Equalities Impact Assessment (EIA) has been undertaken in relation to this measure. This fulfils the requirements placed on Ministers and Departments by the Public Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010, to pay 'due regard' to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

12.12 The EIA examines the foreseeable impacts on those who share the protected characteristics listed under the 2010 Act. No direct adverse impacts were identified as resulting from this policy for persons sharing protected characteristics.

12.13 A Justice Impact Test has also been prepared in relation to this policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses.

13.3 The affected small businesses are non-public sector burial authorities (which are estimated to account for approximately 25% of providers); non-public sector cremation authorities (which account for approximately 36% of providers); and funeral directors. It is not clear how many of the burial authorities and cremation authorities are small or micro businesses.

13.4 The aim of the legislation is to allow bereaved parents to access stipulated burial and cremation services free at point of need. Though providers will be expected to apply to the CFF for reimbursement, they will experience no net loss as a result of this policy as reimbursements are to be made at retail price. It is for this reason that no mitigating action has been taken.

13.5 As part of the policy development process, the Government engaged with the key representative bodies including the Institute of Cemetery and Crematorium Management, the Federation of Burial and Cremation Authorities, the National Association of Funeral Directors, and the National Society of Allied and Independent Funeral Directors, all of whom have welcomed the Government's offer of practical support to bereaved families.

13.6 On the basis that this instrument makes funding available to all providers without favouring any particular group in terms of size or market share, the Government believes that it does not raise any significant competition issues.

14. Monitoring & review

14.1 The effect of the provisions set out in this instrument will be monitored post-implementation in order to evaluate the effectiveness and efficiency of the scheme and its impact on the industry.

15. Contact

15.1 Dominic Lake at the Ministry of Justice Telephone: 0203 334 6070 or email: Dominic.lake@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dominic Lake, Deputy Director for Administrative Justice, Coroners, Burial, Cremation and Inquiries, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Edward Argar MP, Parliamentary Under Secretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.