EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND FUNERAL EXPENSES PAYMENT (AMENDMENT) REGULATIONS 2021

2021 No. 65

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument addresses deficiencies in retained EU law relating to social fund funeral expenses payments arising from the withdrawal of the United Kingdom from the European Union. It is made under section 8 of the European Union (Withdrawal) Act 2018 (the "2018 Act"). The law it addresses has been retained under section 2 of the same Act. It amends the Social Fund Maternity and Funeral Expenses (General) Regulations (the "2005 Regulations) so that a reference to a "member State of the European Union" also refers to the United Kingdom to reflect its position as an independent State. This will maintain the status quo for eligible EEA nationals and their family members organising a funeral in the UK.

What did any relevant EU law do before exit day?

2.2 The 2005 Regulations form part of English and Welsh domestic legislation. Regulation 7(9)(a) and 7(10) form part of EU-derived domestic legislation and allowed for eligible EEA nationals and their family members to be awarded a social fund funeral expenses payment for funerals taking place in "a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland". As the United Kingdom was a Member State of the European Union this included funerals in the United Kingdom.

Why is it being changed

2.3 Without the amendments, as the United Kingdom is no longer a member of the European Union, eligible EEA nationals and their family members could be awarded a social fund funeral expenses payment for a funeral taking place in countries in the EEA or Switzerland, but not in the United Kingdom.

What will it now do?

2.4 It will maintain the status quo for eligible EEA nationals and their family members, who will continue to be able to be awarded a social fund funeral expenses payment for a funeral taking place in either the United Kingdom, the EEA or Switzerland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was presented to the Sifting Committees on 11/01/21 for their consideration by the Minister for Lords, Baroness Stedman-Scott. The Sifting

Committees recommended that this instrument should be subject to the negative procedure.

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)

3.2 As the instrument is subject to 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 territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

4.3 Corresponding legislation for Northern Ireland will be produced and led by the Department for Communities in Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The 2018 Act contains a power to make secondary legislation to 'fix' legal inoperabilities and other deficiencies that will arise on exit in retained EU law. This includes EU-derived domestic legislation.

6.2 This instrument amends Regulation 7(9)(a) of the 2005 Regulations by substituting "Norway or Switzerland" with "Norway, Switzerland or the United Kingdom." The full text of Regulation 7(9)(a) currently reads "in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland".

6.3 This amendment will maintain the status quo for persons falling within Regulation 7(10) of the 2005 Regulations, so that they can continue to be eligible for a social fund funeral expenses payment if they hold a funeral in the United Kingdom. This amendment is necessary because the United Kingdom is no longer a "member State of the European Union".

7. Policy background

What is being done and why?

7.1 This instrument is needed to maintain the policy position that eligible EEA nationals and their family members should be able to claim a Social Fund Funeral Expenses payment for funerals taking place in the United Kingdom as well as in EEA states and Switzerland, now the United Kingdom is no longer a Member State of the European Union.

7.2 Social Fund Funeral Expenses Payments help eligible claimants with the cost of arranging a funeral. Funeral Expenses Payments meet the full, 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 the coffin, church and funeral director fees. The discretionary element is capped at £1000 (or £120 where the claimant is provided with some items or services under a pre-paid funeral plan).

7.3 To qualify for a Social Fund Funeral Expenses Payment a claimant must first qualify for certain income related benefits such as Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Pension Credit, Housing Benefit, the disability or severe disability element of Working Tax Credit, Child Tax Credit, Universal Credit, Support for Mortgage Interest. EEA citizens resident in the UK prior to the end of the transition period (11pm 31 December 2020) and their family members need to apply to the EU Settlement Scheme (EUSS) to continue living in the UK after 30 June 2021. Those granted settled status will have the same access to benefits as comparable British citizens.

7.4 All non-British citizens (excluding Irish citizens) who arrive from 1 January 2021, except for in special circumstances, will be restricted from accessing income-related benefits until they have achieved indefinite leave to remain, typically after 5-years.

7.5 This instrument makes a minor change to domestic legislation to reflect that the UK is no longer a Member State of the European Union. Regulation 7(9)(a) of the 2005 Regulations implicitly refers to the United Kingdom as a Member State of the European Union so an amendment is made to reflect the United Kingdom's new status as a state independent of the European Union.

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

8.1 This instrument is being made using the power in section 8 of the 2018 Act in order to address deficiencies in the 2005 Regulations arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website legislation.gov.uk.

10. Consultation outcome

10.1 This instrument maintains the status quo and, as set out in paragraph 12 below, will not materially affect business, charity or voluntary bodies.

11. Guidance

11.1 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.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it has no impact on business or civil society organisations.

13. Regulating small business

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

14. Monitoring & review

14.1 As this instrument is made under the 2018 Act, no review clause is required.

15. Contact

15.1 The Social Fund Policy Team at the Department for Work and Pensions (email: socialfundstrategy.singlepointofcontact@dwp.gsi.gov.uk.) can answer any queries relating to this statutory instrument.

15.2 Helen Walker, Deputy Director for Social Fund Policy area, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Lords, Baroness Stedman-Scott can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

Statement	Where the requirement sits	To Whom it Applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

Sub-delegation	Paragraph 30, schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations Where amending regulations under 2(2) ECA 1972	Explanations Where amending Regulations under 2(2) ECA 1972	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law
Scrutiny statement where Amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2
Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Minister for Lords, Baroness Steadman-Scott, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Social Fund Funeral Expenses Payment (Amendment) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the instrument consists of a minimal textual amendment to a statutory instrument which maintains the status quo.

2. Appropriateness statement

2.1 The Minister for Lords, Baroness Steadman-Scott has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Social Fund Funeral Expenses Payment (Amendment) Regulations 2021 do no more than is appropriate. This is the case because the instrument does no more than prevent, remedy or mitigate deficiencies in otherwise retained EU law arising from the withdrawal of the UK from the EU".

2.2 This is the case because it consists of a technical change that seeks to maintain the status quo.

3. Good reasons

3.1 The Minister for Lords, Baroness Steadman-Scott has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These reasons are detailed in paragraph 7 of this explanatory memorandum."

4. Equalities

4.1 4.1 The Minister for Lords, Baroness Steadman-Scott has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 The Minister for Lords, Baroness Steadman-Scott has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to this instrument I, Baroness Steadman-Scott have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.