

EXPLANATORY MEMORANDUM TO
THE SOCIAL FUND
MATERNITY AND FUNERAL EXPENSES (GENERAL)
REGULATIONS 2005

2005 No. 3061

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. **Description**
 - 2.1 This instrument revokes and replaces, with a few minor changes, the Social Fund Maternity and Funeral Expenses (General) Regulations 1987. Its provisions simplify the structure and wording of those Regulations in the interests of clarity.
 - 2.2 The instrument limits the scope of existing tests which restrict a person's eligibility for funeral payments. It removes an anomaly and, as a positive change, extends the list of those excluded from the "nature and extent of contact" test to replicate those excluded from the "immediate family member" test.
 - 2.3 The instrument also converts reference to imperial miles to an equivalent distance in kilometres, redefines the definition of "family" to include members of a polygamous marriage, rather than a polygamous relationship and makes provision for the new regime in relation to civil partnership.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Funeral Payments help with funeral expenses where someone has good reason for taking responsibility for the funeral arrangements and has been awarded a qualifying benefit or tax credit. Annex A contains background on the Funeral Payment scheme. Sure Start Maternity Grants help with the costs of a new baby where someone has been awarded a qualifying benefit or tax credit. Annex B contains background on the Sure Start Maternity Grant scheme.
 - 4.2 Since the introduction of the Social Fund Maternity and Funeral Expenses (SFMFE) Regulations in 1987 there have been several modifications, including a major overhaul of the scheme in 1997. In a

memo dated 6 November 2001 the Joint Committee on Statutory Instruments asked that, given that the 1987 principal regulations have been amended on numerous occasions, the regulations be consolidated. The Department agreed to undertake the consolidation, however, this has been a time consuming and lengthy exercise, involving re-examination of many policy questions contained within the regulations.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 Funeral Payments help with funeral expenses where someone has good reason for taking responsibility for the funeral arrangements and has been awarded a qualifying income related benefit or tax credit.

7.2 Where the deceased is not a child, if the person making the claim is not the partner of the deceased, certain tests are applied to the claim:

- Under the “immediate family member” test, subject to some exceptions (children; 16 and 17 year olds; full-time students in advanced education aged under 19; people in receipt of asylum support; members of and fully maintained by religious orders; people in prison or hospital who were awarded one of the qualifying benefits/tax credits immediately before admission; and family members living outside the United Kingdom), where there is a parent, son or daughter who was not estranged from the deceased and they, or their partner, are not in receipt of a relevant benefit, no help will be given
- Under the “nature and extent of contact” test, the circumstances of close relatives (close relatives include parents, children, brothers, sisters and certain in-laws and step-relatives) are considered. Where one of the close relatives had closer contact with the deceased than the claimant, no help will be given. Where someone had equal contact and neither they nor their partner had been awarded a qualifying benefit or tax credit, no help will be given unless that family member is under the age of 18 or lives outside the United Kingdom

7.3 To remove an anomaly, the instrument adds full-time students in **non**-advanced education aged under 19 to the groups excluded from the “immediate family member” test and, as a positive change, extends the

list of those excluded from the “nature and extent of contact” test to replicate those excluded from the “immediate family member” test.

- 7.4 The consolidated Regulations restructure and simplify the 1987 Regulations in the interests of clarity.
- 7.5 The instrument converts reference to imperial miles to an equivalent distance in kilometres, with a supplementary indication as to the imperial equivalent.
- 7.6 Its provisions redefine the definition of “family” to include members of a polygamous marriage, rather than a polygamous relationship, thus aligning the membership of family definition to that for income support and income-based-jobseeker’s allowance.
- 7.7 The instrument also makes provision for the new regime in relation to civil partnership.
- 7.8 No formal consultation has taken place. The Social Security Advisory Committee did, however, consider the proposed amendments in October 2005 and agreed that they need not be formally referred to it.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business or voluntary bodies.
- 8.2 The impact on the Public sector resulting from the positive change of extending the list of those excluded from the “nature and extent of contact” test to replicate those excluded from the “immediate family member” test will be negligible.

9. Contact

- 9.1 Chris Etty at the Business Design Directorate of the Department for Work and Pensions Tel: 0113 23 24811 or e-mail: chris.etty@jobcentreplus.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

General

1. Social Fund Funeral Payments provide help with funeral expenses where someone has good reason for taking responsibility for the funeral arrangements and has been awarded a qualifying benefit or tax credit. The allowable amount covers the necessary cost of specified items including burial or cremation charges. Where burial is chosen the amount allowed would include the necessary cost of purchasing a new burial plot with exclusive right of burial, where appropriate. An additional amount of up to £700 for other funeral expenses is also allowable.

How the scheme operates

2. Help is available where:
 - (a) the deceased was ordinarily resident in the UK and had either made no provision or insufficient funds are immediately available, for a simple, respectful funeral;
 - (b) the person who takes responsibility, or their partner, is receiving one of the qualifying means-tested benefits or tax credits;
 - (c) the person who takes responsibility has good reason for doing so;
 - (d) that person has insufficient funds available from the assets of the deceased or certain other sources, to meet the cost of a simple, dignified, low-cost funeral;
 - (e) the funeral takes place in the UK or, in certain circumstances, in another member State of the European Economic Area (EEA).
3. The qualifying benefits and tax credits are: Income Support, Pension Credit, income-based Jobseeker's Allowance, Working Tax Credit where the disability or severe disability element is included in the award, Child Tax Credit payable at a rate higher than the family element, Housing Benefit and Council Tax Benefit.
4. A claim for a Social Fund Funeral Payment may be made from the date of death up to three months after the date of the funeral.
5. Any money immediately available from the deceased's estate, contributions received, lump sums from insurance policies and the like are taken into account and deducted from any amount allowable. However, the claimant's savings are not taken into account.

“Good reason for taking responsibility” tests (immediate family member/nature and extent)

The following are deemed to have good reason for taking responsibility for funeral expenses:

the surviving partner;

the parent (or their partner) of a child who has died, unless there is an absent parent and neither they nor their partner have been awarded a qualifying benefit or tax credit;

the parent (or their partner) of a still-born child.

Where there is a surviving partner, no-one else will be entitled to help from the Social Fund. Where the person making the claim does not fall into the categories described above, but is an immediate family member, close relative or close friend of the deceased, the Decision Maker will consider whether they have good reason for accepting responsibility for the funeral expenses. This will be done by looking at the circumstances of any other immediate family members or close relatives of the deceased.

The first consideration will be to look at all immediate family members. Where there is a parent, son or daughter, and neither they nor their partner have been awarded a qualifying benefit or tax credit and they do not fall into one of the excluded groups, or are not estranged from the deceased at the date of death, no help will be given. In such cases, it would be considered unreasonable for the taxpayer to meet the costs. The excluded groups are: children; 16 and 17 year olds; full-time students in advanced education aged under 19; people in receipt of asylum support; members of and fully maintained by religious orders; people in prison or hospital who were awarded one of the qualifying benefits/tax credits immediately before admission; and family members living outside the United Kingdom.

Where the claim is not refused as a result of the immediate family member test, the Decision Maker will consider the nature and extent of contact the person making the claim had with the deceased in order to decide whether it is reasonable for that person to accept responsibility for the funeral costs.

The next consideration is for the Decision Maker to consider the nature and extent of contact the person making the claim had with the deceased compared with that of all other close relatives of the deceased (close relatives include brothers, sisters and certain in-laws and step-relatives).

Where the Decision Maker determines that someone else had closer contact, no help will be given to the person making the claim.

Where this is not the case, but the Decision Maker determines that someone had equal contact and neither they nor their partner had been awarded a qualifying benefit or tax credit, no help will be given unless that family member is under the age of 18 or lives outside the United Kingdom.

Annex B

General

The purpose of the Sure Start Maternity Grant is to help people on certain income related benefits or tax credits with the expenses associated with a new baby.

Qualifying conditions

It is payable to claimants or the partners of claimants who have an award of Income Support, income-based Jobseeker's Allowance, Pension Credit, Child Tax Credit at a rate higher than the family element or Working Tax Credit that includes the disability or severe disability element and,

- the claimant, their partner or a member of their family is pregnant, or has given birth to a child, or
- the claimant and/or their partner has adopted a child under one, or
- the claimant and their spouse have been granted a parental order following a surrogate birth

In addition the claimant or partner has received advice from a health professional on child health and welfare and, where the claim is made in advance of the birth, maternal health.

Time limits for claiming

Claims can be made at any time from 11 weeks before the baby is due until three months after the date of birth, or up to three months after the date of adoption or parental order.

Amount payable

The grant is £500 for each child expected, born, adopted or the subject of a parental order.