

**Business & Regulatory Impact Assessment
(BRIA)**

**Funeral Expense Assistance
(Scotland) Regulations 2019**

January 2019

Final Business and Regulatory Impact Assessment (BRIA)

Funeral Expense Assistance (Scotland) Regulations 2019

Purpose and intended effect

Background

1. The Social Security (Scotland) Act 2018¹ (the Act) was brought forward as a result of the changes to the devolution settlement enacted in the Scotland Act 2016.
2. Section 34 and Schedule 8 of the Act make provision for Funeral Expense Assistance (FEA) and require that Scottish Ministers make regulations setting out provision of assistance to be given based on the eligibility entitlement of 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). The regulations also include provision for timescales for the processing of redeterminations and certain issues of processing relating to application dates.
3. FEA will replace the current Funeral Expenses Payment in Scotland by summer 2019.
4. The Funeral Expense Assistance (Scotland) Regulations 2019 provide detailed rules relating to the benefit. Further details will be set out in operational guidance.

Objective

5. FEA will provide a one-off payment to support people on certain low income benefits or tax credits by providing a contribution towards the cost of a funeral. FEA is intended to help improve the outcomes for bereaved people by reducing the burden of debt they may face when paying for a funeral.
6. The FEA payment provides a contribution towards funeral costs:
 - **Burial or Cremation costs.** This may also include the cost of any documents that are required to allow the burial and cremation to take place;
 - **Certain travel costs;**and
 - **A flat rate payment for other expenses.** This may be used towards any other funeral expenses such as funeral director fees, a coffin, and flowers. The amount of other expenses will either be –
 - £700 for the majority of eligible applicants where the deceased had no funeral provision in place (this payment amount will apply for all FEA payments for child funerals); or
 - £120 to eligible applicants where the deceased had made provision for their funeral through a funeral plan.

¹ Social Security (Scotland) Act 2018 - <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

Rational for Government intervention

7. These regulations will expand the support available so that more individuals on low income benefits who are arranging a funeral will be eligible to receive a contribution towards funeral costs. The individuals who will be assisted by the payment would have had to make funeral arrangements in any case but some would not have received any financial support from the DWP to do this. As at present, support for either burial or cremation will be provided by the payment. As a result, these regulations are not expected to result in a behavioural change of the applicant when they are choosing the type of funeral service they want to arrange (which might impact upon burial and cremation authorities).
8. The FEA payment is solely concerned with providing financial support to the individual with funeral costs. Any action taken by a burial or cremation authority in Scotland in delivering the funeral for the individual will continue to be carried out in accordance with the relevant regulations under the Burial and Cremation (Scotland) Act 2016, and in line with any other relevant regulatory requirements.
9. This support is part of achieving the Scottish Government's National Outcomes and will specifically contribute towards the following:
 - We tackle poverty by sharing opportunities, wealth and power more equally; and
 - We respect, protect and fulfil human rights and live free from discrimination.
10. In relation to the five principles of better regulation:
 - **proportionate** – Though FEA's main positive impact is directly on applicants, the Scottish Government will look to identify and minimise any indirect negative impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the benefit. We will also look to identify and maximise positive impacts for the sectors where we are able to do so. For example, we will process FEA applications within ten working days and make payments as soon as practicable thereafter. This is faster than the current FEP and is expected to reduce the amount of time that funeral directors have to carry debt, which is expected to have a positive impact on their businesses.
 - **consistent** – The Scottish social security system takes a rights-based approach to entitlement. The Scottish Government will publish guidance on the benefit so that people understand how decisions are being made. There will be a reconsideration process where an applicant disagrees with a decision and an appeal process to the Social Security tribunal.
 - **accountable** – There are many levels of accountability in the new social security system. This starts with our commitment to applicants to help them understand their rights, including asking for a redetermination of a decision they are unhappy with and appealing that decision if they are still unhappy with the outcome of the redetermination. At a system-wide level, Social Security Scotland will produce a yearly report on performance of the Scottish social security system. Woven in between this, the new charter has been co-designed with people that have lived experience of the system and reflects the principles included in the Social Security (Scotland) Act 2018. Parliament will have a formal role in approving the first charter and any subsequent reviews. A new body called the Scottish Commission on Social Security will be established to ensure that people's rights are protected at a more systemic level through placing a duty on the Commission to report independently on the system's

performance against the charter. The Scottish Public Services Ombudsman will be able to use the charter as an independent set of standards to deliver robust individual redress. Courts and Tribunals will also be able to take the charter into account where it is considered relevant to proceedings.

- **transparent** – We are developing a communications strategy for FEA. This will aim to ensure that people who are eligible, the funeral industry, local government, advice providers and others are aware of the benefit, know how to apply and understand the eligibility criteria. We will publish guidance on the benefit so that people understand how decisions are being made.
- **targeted only where needed** – FEA is targeted at people on lower incomes. There are projected to be around 56,000 deaths in Scotland each year. The number of people eligible for FEA will be around 40 per cent higher than those eligible under the current Funeral Expenses Payment. the Scottish Fiscal Commission has forecast that the Scottish Government will make around 4,400 FEA payments during the first full year of operation.

Consultation

11. The FEA & Funeral Poverty Reference Group² was established in March 2016 to help gather evidence, bring a variety of informed perspectives and provide feedback on proposals for FEA. Membership includes funeral directors, local government, third sector welfare rights advisors, bereavement organisations, faith groups, groups representing older people, and others with an interest. Involving a wide range of organisations and individuals with experience of the current system from the outset has developed a policy which draws on their wealth of knowledge and experience.
12. The consultation, A new Future for Social Security in Scotland, ran between 29 July and 30 October 2016³. The Funeral Payments section sought views on how individuals thought the new Scottish benefit could achieve improvements such as reaching more people and creating more predictable eligibility 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 seen in the independent analysis report, from page 179⁴.
13. The then Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP, also hosted three stakeholder round table events between 15 September and 5 October 2016; and the National Conference on Funeral Poverty on 16 November 2016. These events provided stakeholders the opportunity to feed into the early development of the policy discussions and were encouraged to contribute to the above consultation.
14. Consultation responses and the events helped shape the initial 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.

² FEA & Funeral Poverty Reference Group - <https://www.gov.scot/groups/funeral-poverty-and-funeral-expense-assistance-reference-group/>

³ 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

⁴ Analysis of Written Responses to the Consultation on Social Security in Scotland - <https://www2.gov.scot/Resource/0051/00514351.pdf>

15. 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. They were also shared with a range of stakeholders to inform further development of the policy.
16. Between 17 May and 23 August 2018 the Scottish Government undertook a 14 week consultation⁵ on the draft regulations for FEA. The consultation summarised the findings of impact assessments to that point and sought views on any further impacts. There were 41 separate responses (of which 16 said they had no additional evidence for the draft BRIA; a further 17 gave no response; and 8 did provide further information for the BRIA)⁶. An independent analysis report⁷ has been published summarising responses. A detailed response to the consultation report by the Scottish Government has been published alongside the FEA regulations⁸.
17. In addition, a consultation event was organised with the Scottish Ethnic Minority Older People Forum, attended by 85 people from different faith, cultural and ethnic backgrounds.
18. The Social Security 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 stakeholders⁹.
19. To ensure that people with direct personal experience of the current benefits system could help us decide how benefits are delivered in Scotland's new social security system, the Scottish Government set up Experience Panels. A summary of the initial research findings and user research for FEA will be published in spring in 2019.
20. Meetings have also taken place with individuals & organisations to discuss specific area and interests. This includes, but is not limited to, meetings with:
- **the funeral industry** – Golden Charter worked in partnership with the Scottish Government to deliver a focus group of 13 small independent funeral director firms (15 November 2018); National Association of Funeral Directors [NAFD] (26 March 2018); Institute of Cemetery and Crematorium Management [ICCM] (20 March 2018); the National Society of Allied and Independent Funeral Directors [SAIF] Annual General Meeting (22 February 2018); and Dignity (22 January 2018).
 - **other Individuals & organisations** – Stonewall (5 October 2018); Judith Paterson (5 September 2018); COSLA (24 April 2018); Humanist Society of Scotland (13 April 2018); Money Advice Scotland (5 April 2018); Roman Catholic Church (27 March 2018); John Birrell (20 March 2018); Scottish Older People's Assembly [SOPA] (19 March 2018); Marie Curie (6 March 2018); Church of Scotland (26 February 2018); Citizens Advise Scotland (19 February 2018); NHS Lothian (2 February 2018); Muslim Council of Scotland (14 August 2017); Young Scots (20 July 2017); Families Outside (17 July 2017); and Scottish Women's Aid (17 July 2017).

⁵ Consultation on Funeral Expense Assistance Regulations - https://consult.gov.scot/social-security/funeral-expense-assistance/supporting_documents/00535472.pdf

⁶ Published responses to the FEA consultation - https://consult.gov.scot/social-security/funeral-expense-assistance/consultation/published_select_respondent

⁷ Funeral Expense Assistance Regulations: consultation analysis - <https://www.gov.scot/publications/funeral-expense-assistance-regulations-analysis-consultation-responses/>

⁸ Scottish Government Response to the FEA Consultation – <http://www.gov.scot/ISBN/9781787814738>

⁹ 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

21. We are continuing to develop the business processes which will allow people to access and receive FEA. We are continually testing and evolving designs with individuals and organisations to make the application process as user-friendly as possible. We will use this and future research as we continue to develop the process to deliver FEA.
22. After we start to make payments, we will continue to take account of feedback from service users in order to enhance our IT systems and ensure Social Security Scotland staff have what they need to provide a high level of service. This will help ensure the service we provide has dignity, fairness and respect at its heart.

Sectors & groups affected

23. Local authorities provide burial services in their local area, along with private cemetery providers. In addition, 14 local authorities in Scotland also run crematoriums. There are 16 non-local authority crematoriums currently operating in Scotland. One of these, at Glasgow Crematorium (formerly known as Maryhill), is a charity. The others are private businesses. There are also a number of private burial providers in Scotland, such as the Roman Catholic Church and those providing green / natural burials.
24. There are approximately 450 individual funeral director businesses in Scotland. This figure does not include the sometimes tens of branches of bigger businesses like the Cooperative or Dignity. These are counted as one business.
25. Around 80% of funerals in Scotland are carried out by funeral directors who are members of NAFD or SAIF. It should be noted that some funeral directors are members of both organisations, while others are members of neither.
26. The Scottish Government has appointed an Inspector of Funeral Directors who took up her post in July 2017. An Inspector of Crematoria has been in post since April 2015 and an Inspector of Burials will be appointed in due course. The Scottish Government does not consider that the FEA regulations will have any direct impact on the work of these inspectors. We are, however, continuing to liaise with the current inspectors so that they understand the changes to support available to members of the public as a result of the introduction of FEA. If, in the future, a licence or register is introduced for Scottish funeral directors then Social Security Scotland would expect to make FEA payments only to funeral directors in Scotland who are on the register or have a licence. We expect to make some payments to funeral directors in the rest of the UK and would look to take a similar position should a statutory register or licensing of funeral directors be introduced elsewhere.

Option 1 - Do nothing:

27. Transfer of powers to Scotland to deliver support for funerals is set out in the Scotland Act 2016 and provision has been made in the Social Security (Scotland) Act 2018. Therefore, not taking over powers from the DWP is not considered to be a viable option.

Benefits & Costs

28. There are not considered to be any benefits to this option.

29. If the DWP were to stop making FEP payments to Scottish applicants and the Scottish Government did not provide a benefit to replace this provision then around 3,500 people per year would be worse off as they would not receive financial support with funeral costs. This loss of support would be expected to total around £4.5 million initially. This would be expected to have an impact on the funeral industry – as more individuals would be likely to struggle to meet funeral costs and would be more likely to default on their bill. This would result in increased debt for the funeral directors which could result in some providers ceasing trading.

30. Alternatively, some families might decide that they were unable to afford to arrange a funeral without financial support. In these circumstances, it is expected that responsibility for ensuring burial or cremation takes place would fall to the local authority in the area where the person has died, as a National Assistance Funeral. Local authorities would need to find additional resources to meet these funeral costs – either from existing funding or through increases in burial and / or cremation fees or through increases in Council Tax rates.

Option 2 - Introduce benefit on same basis as current DWP provision:

31. Under this option, the Scottish Government would deliver FEA by summer 2019 in Scotland, using the same policy as the current DWP Funeral Expenses Payment (FEP).

Benefits & Costs

32. If the Scottish Government provided a replacement benefit on the same basis as current DWP provision this would provide around 3,500 payments each year, totalling around £4.5 million benefit expenditure initially. The funeral industry (including public and private cemeteries and crematoriums, and funeral directors) would be expected to ultimately receive most of this in payment for their services, as is the case at present.

33. The costs to the Scottish Government of this option would be expected to be in line with the funding transferred from the UK Government. Implementing the current DWP model would mean that the value of the capped element of the payment, which has been frozen at £700 since 2003, would continue to lose value over time, meaning that the gap between the average payment and the cost of a funeral would be expected to grow. In continuing to freeze the capped element of the payment, and by maintaining current eligibility, there would be expected to be an increase in the level of bad debt carried by funeral directors over time, as more people struggle to pay funeral costs. Processing payments to the current timescales would mean that applicants and the funeral industry would continue to face uncertainty on the amount of time that it would take to find out whether an application had been successful.

Option 3 - Introduce FEA (recommended option):

34. The Scottish Government will deliver FEA by summer 2019 in Scotland, replacing the current DWP Funeral Expenses Payment. This decision followed extensive engagement with stakeholders as set out in the Consultation section of this BRIA.
35. FEA will provide a one off payment to support people on certain benefits or tax credits with a contribution towards the cost of a funeral. This is intended to alleviate the burden of debt they may face, helping to reduce funeral poverty.
36. Changes to FEA compared to the current Funeral Payment include:
- Using a clearer and more flexible assessment process to determine who is responsible for the funeral costs;
 - Uprating the flat rate element of the payment annually in light of inflation;
 - Introducing a ten working day processing time for completed applications; and
 - Developing clear communications about FEA to raise awareness of the benefit and make it easier to understand in advance who is likely to be eligible for support.

Benefits & Costs

37. The Scottish Government will uprate the value of any relevant figures in the FEA regulations annually to take into account the impact of inflation. This requirement to uprate will apply to the £700 flat rate element of FEA. At present, we expect that this will result in around £60,000 additional benefit expenditure in the first year that uprating is applied, in addition to the additional expenditure already committed to widen eligibility. Annual uprating of the flat rate element of the FEA payment will mean that the value of this part of the payment will not be eroded due to inflation. The Scottish Government understands that the majority of the flat rate element of the payment is made to funeral directors towards their fees.
38. The Scottish Fiscal Commission (SFC) is responsible for producing independent forecasts for devolved social security expenditure. For FEA, the SFC has published forecasts alongside the Budget on 12 December 2018¹⁰.
39. 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 each year, around £2 million more than for FEP. As these funerals would have been taking place in any case, the additional expenditure will benefit individuals by providing support to pay for the funeral, reducing the burden of debt they face. It is also expected to reduce the level of bad debt carried by funeral directors as more people facing funeral poverty would be expected to receive a payment with much of the additional £2 million expected to be paid to funeral directors.
40. 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).

¹⁰ 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/>

41. Administration costs for FEA form part of wider financial planning for Social Security Scotland.
42. Building on the Social Security (Scotland) Act's framework for a social security system that is founded on dignity, fairness and respect, Scottish Ministers are committed to supporting people to access their full entitlement. The Scottish Government is working with stakeholders and individuals to determine how best to increase awareness of the benefit so that as many people as possible take up their entitlement from the date of launch. The Act requires Scottish Ministers to prepare a strategy to promote take up of the benefits it is administering, including FEA.

Scottish Firms Impact Test

43. As set out in the Consultation section of this final BRIA, engagement with the funeral industry and other stakeholders about FEA has been ongoing for a significant period of time, including through a National Conference on Funeral Poverty, stakeholder reference group, and meetings with individual stakeholder organisations.
44. Issues highlighted by funeral directors, funeral director professional associations, and local authorities to date include:

Increasing the £700 element and committing to annual uprating

45. The majority of stakeholders, including funeral directors and their representative bodies, and a number of FEA draft regulation consultation responses suggested that the element of the FEA payment for other expenses should be increased above the £700 maximum currently paid by DWP. This has been frozen since 2003.
46. The Scottish Government has considered increasing the amount payable for other expenses as part of the policy development process that has taken place for FEA. In doing so, we are balancing widening eligibility for FEA to assist more of those in need with the overall amount of the payment. We have decided to widen eligibility for FEA which will increase the number of people who are eligible by 40%, assisting more of those in need who would otherwise receive no support at all. The Scottish Government has committed, through a stage 3 amendment to the Social Security Bill, to uprate any relevant figures specified in the FEA regulations annually to take into account the impact of inflation. At present, this will apply to the flat rate for other expenses (currently £700) and will protect individuals from any further reduction to the value of this part of the payment due to inflation.

Continuing DWP policy of making payments directly to funeral directors where there is an outstanding funeral bill

47. We understand that currently DWP makes the Funeral Payment directly to the funeral director on behalf of the applicant in the majority of cases. However, the applicant can specifically request the payment to be made to them if they wish, and this would clearly happen when the bill had already been paid. The current process provides the funeral director with reassurance they will receive payment for their services if the applicant is successful in their application; and reduces the administrative burden on the applicant to forward on their award to help reduce, or clear, any outstanding debt for the funeral service, at a time when they will be grieving. The funeral industry has strongly indicated that it would wish this process to continue for FEA.

48. We have also tested this with a number of other stakeholders. Many participants supported the idea of payments being made directly to funeral directors and felt that this would make things easier for the family. However, others felt it was important to have a choice, or preferred for the payment to be made to them. The Scottish Government has also heard that making payments to funeral directors could help avoid situations of financial abuse. It has been suggested by stakeholders representing advice providers that this policy should be delivered in a more transparent manner than at present to ensure the applicant is fully informed and able to take decisions throughout the process.

49. The Scottish Government's consultation on draft FEA regulations asked a question about making payments directly to funeral directors, proposing to continue with the presumption that, where there is a bill outstanding and the applicant consents, the payment will be made directly to the funeral director. Where the bill has already been paid, the payment will be made to the applicant. 83% of respondents supported this approach and so the Scottish Government will design a payment process for FEA on this basis.

Processing payments quickly, making a decision in principle and deposit payments

50. The Scottish Government has made a commitment that FEA applications will be processed within ten working days of receipt of a completed application, and payment made as soon as practicable thereafter. This responds to concerns that have been raised by organisations, including the funeral industry, that the current DWP assessment process takes too long. This commitment will provide additional certainty for applicants and funeral directors about when a payment will be made and is considerably faster than the DWP target of 15 working days, which was met in 18.67% of cases in 2016/17. The Scottish Government will collect management information for FEA in a number of areas, including on performance against the ten day processing commitment, and is considering the most appropriate means of reporting this information. This will allow FEA policy to be reviewed in the future using a robust evidence base.

51. A number of funeral directors and some other stakeholders have suggested that taking a decision in principle at the point of application was worth exploring as it would give people reassurance that they would receive support and therefore feel more able to plan a funeral. Following on from a decision in principle, the Scottish Government has heard that making deposit payments would reduce the risk of bad debt for funeral directors. However, there was acknowledgement from stakeholders that an incorrect decision in principle could be distressing and more difficult than the uncertainty under the present system. It was suggested that in order to be effective a decision in principle had to be provided very quickly. However, to take that decision with a sufficient level of confidence that it would not be reversed later in the process would require evidencing. That might result in a decision in principle not being provided much faster than the existing ten day processing commitment. It was noted that this would potentially double administration requirements and therefore increase costs. We heard that some Local Authorities had tried to take decisions in principle for Housing Benefit decisions and this had proved to be very difficult in practice.

52. Having considered the range of views expressed, the Scottish Government has decided that the risks of taking an incorrect decision and potential additional administration costs outweigh the potential benefits of taking a decision in principle and so have decided not to take forward this proposal. Instead, we will process payments within ten working days and will develop clear communications to make it as easy as possible for applicants and the funeral industry to understand in advance if someone is eligible for a payment.

53. We have also been exploring whether an eligibility checker which asks a small number of questions related to eligibility could be helpful to give people an indication of whether they might be eligible for an FEA payment. A prototype of this has been developed and is being testing it with individuals and organisations, to see whether it should be provided when FEA launches.

Removal of the lower flat rate of £120 for ‘other expenses’ where the person who has died had a funeral plan

54. A number of stakeholders have proposed that the current lower flat rate of £120 for ‘other expenses’ is removed so that all successful applicants would receive the £700 flat rate. At present, the £120 rate is used rather than the £700 rate in circumstances where the deceased has made provision for their own funeral through a funeral plan, though data is not available from DWP to assess how often this lower payment amount is applied in practice. It has been suggested this lower rate may act as a disincentive for individuals to save for their own funeral. However, removing this rate would mean that some applicants would receive the full £700 in addition to having almost all funeral costs paid for by a funeral plan. These applicants would be in a better position than applicants where the deceased had made provision for the funeral in ways other than a funeral plan (for example a bank savings account) as these savings would be deducted from the payment amount. This would create an unfairness in the system. Having considered the benefits and risks of this proposal, the Scottish Government has decided not to remove the lower £120 flat rate for FEA.

Making it easier to determine in advance who is eligible for a payment

55. The Scottish Government's policy intention is that eligibility will in part depend on the familial relationship or friendship that the applicant had with the person who has died. Currently, the DWP makes the decision about who is the appropriate person to take responsibility for arranging the funeral by asking the applicant a series of questions about their relationship with the person who has died. We have heard that the questions asked are intrusive and distressing (for example in relation to estrangement or financial circumstances of other family members). The complex assessment process extends the length of the current application form and we have heard that it can make it difficult to determine in advance whether someone is likely to be successful in their application.

56. The Scottish Government has been looking at ways to make this process less intrusive, to avoid having to make judgements about family relationships, and to make it clearer in advance who is eligible for FEA. Based on feedback from stakeholders, including the Scottish Working Group on Funeral Poverty, the Scottish Government has decided to use the lists in the Burial and Cremation (Scotland) Act 2016¹¹. Taking this approach was supported by 68% of respondents to the draft FEA regulations consultation question which asked about using this new process (15% did not support this and 17% did not respond to this question).

57. The lists in the Act set out who is the nearest relative of the person who has died, so it is clearer who would make the arrangements for the burial or cremation. In addition to using the family relationship lists in this Act, a key difference from the current DWP Funeral Payment process is that if there was another family member in the same level of the list as the applicant we would not ask the applicant questions about the other person's circumstances in order to consider whether the other family member should take financial responsibility for the funeral. Instead we would accept that the applicant is an appropriate person to take financial responsibility for the funeral. This makes it much clearer before an application is

¹¹ Burial & Cremation (Scotland) Act 2016 - <http://www.legislation.gov.uk/asp/2016/20/contents>

made whether the applicant is likely to be successful. This additional certainty is expected to be beneficial for both applicants and funeral directors

Competition Assessment

58. The four Competition and Markets Authority (CMA) Competition Assessment Questions are:

Will the measure directly or indirectly limit the number or range of suppliers?

59. The Scottish Government does not consider that introduction of FEA will directly or indirectly limit the number or range of suppliers. For example, the Scottish Government has not specified what the £700 flat rate element of the payment should be used for, apart from that it must be for funeral costs. This means that applicants will retain flexibility to decide what services they wish to purchase, rather than being limited to certain specified elements of the funeral – which could have limited the range of suppliers. Similarly, the uncapped element of the payment will continue to fund either burial or cremation charges, so that FEA recipients are able to choose which best fits their circumstances. It is expected that the majority of people will use a funeral director but the Scottish Government will also provide payments to people who choose not to use a funeral director, so not limiting the range of suppliers that can be used.

Will the measure limit the ability of suppliers to compete?

60. The Scottish Government does not consider that introduction of FEA will limit the ability of suppliers to compete. The payment will help consumers to pay for the costs of a funeral and will not favour any particular supplier over another. We expect to work with the funeral industry as we develop the process to deliver the benefit and would welcome further engagement with an suppliers of funeral services who wish to understand better how the payment will operate.

Will the measure limit suppliers' incentives to compete vigorously?

61. The Scottish Government does not consider that introduction of FEA will limit suppliers' incentives to compete vigorously. The payment will help consumers to pay for the costs of a funeral and will not favour any particular supplier over another. Widening eligibility and ensuring that the value of the payment is not eroded by inflation should encourage the funeral industry to compete for this business, as they will have more confidence that applicants will be able to pay for the funeral costs, rather than bad debt arising.

Will the measure limit the choices and information available to consumers?

62. The Scottish Government does not consider that introduction of FEA will limit the choices and information available to consumers. The Scottish Government has been clear that the flat rate part of the payment (currently £700) should not be limited in what it is used for, simply that it must be for funeral costs. This means consumers will be free to make choices about what they wish to have for the funeral. Similarly, the payment will continue to fund either burial or cremation charges, so the consumer is able to choose which best fits their circumstances. It is expected that the majority of consumers will use a funeral director but the Scottish Government will also provide payments to people who choose not to use a funeral director, so not limiting consumer choice.

63. Prior to launch, a communication strategy will be developed to ensure that applicants and the services that they come into contact with and might seek support from are aware of the new benefit, their entitlement, and how they can access it. The Scottish Government has already taken action to increase awareness of funeral options and costs through the Planning Your Own Funeral leaflet which was published in August 2017¹². We will continue to look for opportunities more generally to increase the information available to consumers to help them make informed choices when planning for or arranging a funeral, including those eligible for an FEA payment.

Consumer Assessment

Does the policy affect the quality, availability or price of any goods or services in a market?

64. No. FEA does not set out any regulation or guidance that would impact on the quality, availability, or price of any goods or services in the funeral market. We have widened eligibility for FEA so by around 40% compared to the DWP FEP, which will support more people with funeral costs. This may increase the amount that these people who are now eligible will spend on a funeral but it is more likely that it will reduce the burden of debt they face, and potentially reduce bad debt for suppliers of these services.

Does the policy affect the essential services market, such as energy or water?

65. No. FEA will support eligible applicants to purchase goods or services to deliver a funeral.

Does the policy involve storage or increased use of consumer data?

66. FEA does not require business to increase their storage of consumer data. However, data will be held by Social Security Scotland about the applications for support and this will include evidence that the applicant is responsible for paying for the funeral. A Data Protection impact assessment will be published in 2019 when FEA is launched and the service delivery process is complete.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

67. No. FEA does not increase the ability for unscrupulous suppliers to target consumers. FEA will provide eligible applicants with a one-off contribution towards helping them pay for the funeral products or services that they want to purchase. Transparency of the eligibility and the likely payment amount will help inform people about the support they can expect and in turn inform their decisions. If, in the future, a licence or register is introduced for Scottish funeral directors then Social Security Scotland would expect to make FEA payments only to funeral directors in Scotland who are on the register or have a licence.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

68. No. FEA does not impact on a consumers ability to access information on goods or services related to funerals, nor does it impact on their rights in relation to these. Those who are entitled to FEA will have the same rights, obligations, and routes of complaint as any other consumer would.

¹² Planning Your Own Funeral - <https://www.gov.scot/publications/planning-funeral/>

Does the policy affect routes for consumers to see advice or raise complaints on consumer issues?

69. No. People who are entitled to FEA will have the same rights to seek advice or raise a complaint as any other consumer would. People who receive an FEA award will be able to seek advice from such organisations as Citizens Advice Scotland if they wish to do so. Complaints can be made through official channels or, where a funeral director is a member, through funeral director associations such as NAFD or SAIF.

Test run of business forms

70. We do not anticipate the introduction of any additional forms for businesses as a result of these changes. A new form for applicants will be introduced and will replace the existing form currently processed by DWP. This form will only be introduced after an extensive user testing process. This user testing is expected to involve people with experience of the current system, potential applicants, funeral directors and other organisations with experience of the current FEP. It is expected that it will be possible to make applications online, by post or over the phone. In due course, support from Social Security Scotland will also be available in local areas.

Digital Impact Test

Does the measure take account of changing digital technologies and markets?

71. We have taken changing digital technologies and markets into account during the development of the FEA service. It will be possible to apply for FEA online, which is not currently the case for FEP. This will offer a way to apply for FEA that is more natural for applicants with greater digital skills. FEA has also taken into consideration certain groups that may benefit from an online application process, such as people who use assistive input technologies (such as dictation to a computer), who may find an online application is easier for them to complete.

Will the measure be applicable in a digital / online context?

72. FEA will be available in a digital / online context, including an online application channel. Guidance material advising on who may or may not be eligible will also be available online. Further information on the policy for FEA is already available on the Scottish Government website and will be updated in advance of the service launching. This will allow potential applicants to access information on the benefit quickly and easily. We will also ensure information is available in other formats for people who may find it difficult to access information online.

Is there a possibility the measure could be circumvented by digital / online transactions?

73. No FEA is not a measure that could be entirely circumvented by digital / online transactions. The aim for FEA from the beginning of its development has been to make information on FEA and the ability to apply accessible for all. It is important that people are able to access information to understand the eligibility criteria for FEA but having this information available online and allowing online applications is not considered to remove the need for other application channels to be available. We still expect people to engage with service providers directly to arrange a funeral, and while some of these interactions may take place online, many will still occur over the phone or at a face to meeting to arrange the funeral.

Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

74. No. At present DWP offer a telephone and paper application route to apply for FEA and the Scottish Government will provide both these application routes for FEA. In addition, FEA applicants will be able to apply in a digital context, which is not a route currently available for the DWP FEP.). A digital only transaction could create barriers for those who lack digital skills or easy and private access to the internet. This is why information and applications for FEA will be available in the format that meets the needs of the applicants. We have agreed with DWP Bereavement Service that they will provide a call transfer function for any applicants who call this service where it has been identified that a person requires financial assistance with the cost of the funeral and has a Scottish postcode.

If the measure can be applied in an offline and online environment will this have any adverse impact on incumbent operators?

75. No, the current operator of means-tested funeral assistance benefit is the DWP. On the day that FEA goes live, Social Security Scotland will commence delivery of this benefit and the DWP will cease to provide its FEP benefit in Scotland. This means there will be no incumbent operator for FEA to have an adverse impact upon. Those who would have previously used the DWP's FEP will benefit from a more streamlined application for FEA, which we expect will have a positive impact for applicants. We also expect that applicants and businesses providing funeral services and products will benefit from our commitment to process applications in ten working days, with payments as soon as practicable thereafter.

Legal Aid Impact Test

76. Someone who has applied for an FEA payment but whose application has been unsuccessful will be able to ask Social Security Scotland for a re-determination without having to supply further evidence, but the Agency will take into consideration any new evidence provided. Requests for an FEA re-determination should be made within 31 calendar days of receipt of notification of the original decision. The time period allowed for Social Security Scotland to complete the re-determination will be 16 working days from receipt of a re-determination request. An individual will be able to make a late request for a re-determination up to 12 months from the date of determination if they had a good reason for not requesting sooner. If this is refused the individual will be able to appeal that process decision to the tribunal

77. If the individual is dissatisfied with the re-determination outcome, or if it has not been completed within 16 working days, they can appeal that to the First-tier Tribunal.

78. In Scotland, publicly funded legal assistance through the statutory scheme of Advice and Assistance, and Civil legal aid is available. Advice and assistance is available to enable solicitors to provide various forms of legal advice and assistance short of representation on social security appeals, such as initial advice on whether there is a legal case to take forward, advice on options to proceed, negotiating a settlement, or writing letters on the applicant's behalf. Assistance in the form of representation is not available in the first tier tribunal, but Civil legal aid is available for an onward appeal to the upper tribunal dependent on eligibility.

79. Legal assistance is subject to eligibility testing dependent on the type of assistance sought. This may include financial eligibility testing based on the “disposable income” and “disposable capital” of the applicant. However, where a person receives certain means-tested benefits (such as income support and job seeker’s allowance) their case will not be subject to a means test. It will still be subject to the other SLAB tests of reasonableness and merit. The entitlement to publicly funded legal assistance will be updated as the rollout of universal credit proceeds. At present all people on universal credit pass the means test. Certain other benefits, such as Personal Independence Payment, are not considered to be part of a person’s disposable income.

Enforcement, sanctions and monitoring

80. There will be no additional enforcement, sanctions or monitoring of the services provided by funeral directors, burial and cremation authorities or any other businesses that supply funeral services to FEA applicants. As such, there will be no new burdens for businesses, local government or the third sector generated by these regulations.

81. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. Audit Scotland will monitor and report on the delivery of the social security system, including new Social Security Scotland.

Implementation and delivery plan

82. FEA will be delivered in Scotland by Social Security Scotland (an Executive Agency of the Scottish Government) by summer 2019. Draft regulations to deliver FEA have been laid.

83. A communications strategy is currently being developed in advance of launch of FEA. This will aim to ensure that people who are eligible, the funeral industry, local government and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. We will publish guidance on the benefit so that people understand how decisions are being made.

84. FEA is a key part of the Scottish Government’s work to reduce funeral poverty and we will ensure that FEA is linked into this wider work, bereavement policy, and social security policy more generally.

Post-implementation review

85. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year, as a result, this will collect more robust management information for FEA than is currently available for FEP.

Summary & Recommendation

Costs & Benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy & administrative
1	<p>Do Nothing Scottish Government would save £4.5 million per year.</p>	<p>3,500 recipients would cease to receive funeral assistance (initially worth approx. £4.5 million per year). There would likely be a significant increase in funeral poverty as a result.</p> <p>There would likely be greater uncertainty in the funeral industry around receiving payment for services and there would likely be an increase in level of bad debt carried by funeral directors.</p> <p>We expect Local Authorities would face additional costs as the number of National Assistance Funerals provided by Local Authorities would be likely to increase.</p>
2	<p>Introduce FEA same as current DWP scheme 3,500 recipients will continue to receive funeral assistance (initially worth approx. £4.5 million per year)</p>	<p>Gap between the amount of the payment and funeral costs would be expected to grow over time as capped element remains frozen at £700. This, combined with no widening of eligibility, would mean an expected increase in bad debt for funeral industry and increase in unsustainable debt for people paying for a funeral.</p> <p>The public, and funeral directors, would face continuing uncertainty about the timescale for a payment to be made.</p>
3	<p>Introduce Expanded FEA Eligibility will be widened by around 40%. Scottish Government will invest around £2 million more compared to budget expected to transfer from UK Government.</p>	<p>Eligibility will be widened by around 40% compared to the current DWP scheme (initially worth an around £2 million in the first year year). Total number of payments will therefore increase to 4,400 in 2019-20 (over £6 million in total in the first year).</p>

Declaration & publication

Sign-off for Final BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that

- (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
- (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 20 December 2018

Minister's name: Shirley-Anne Somerville

Minister's title: Cabinet Secretary for Social Security and Older People

Scottish Government Contact point: Lucy Carmichael, Team Leader – Funeral Expense Assistance and Funeral Poverty | Social Security Policy Division | Social Security Directorate



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