



Funeral Expense Assistance Regulations: Analysis of Consultation Responses



EQUALITY AND WELFARE

**Funeral Expense Assistance
Regulations:
Analysis of Consultation
Responses**

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Introduction

Background

The Scotland Act 2016 devolved new social security powers to Scotland. This included competence for the Funeral Expenses Payment (more commonly known as the Funeral Payment). Using powers in the Social Security (Scotland) Act 2018, Scottish Ministers will create a new benefit (to replace the Department for Work and Pensions (DWP) Funeral Payment in Scotland) called Funeral Expense Assistance (FEA), which will be delivered by Summer 2019.

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. The FEA payment is made up of two elements, these being the reasonable actual costs for the burial or cremation (including any documentation required and things such as travel costs); and a flat rate payment as a contribution for other expenses (including such things as funeral director fees, a coffin, flowers, etc.). The other expenses flat rate payment will either be £700, for the majority of eligible applicants where the deceased had no funeral provision in place, or £120 for eligible applicants where the deceased had made provision for their funeral through a funeral plan.

Under proposed eligibility, FEA will reach around 2,000 additional people each year compared to the current DWP Funeral Payment. This will take the total number of payments to approximately 5,600 each year, once a steady state is reached, and annual expenditure to around £8 million.

In addition to those who will be eligible to claim this new assistance, FEA impacts on those who work in the funeral industry, including local authorities, funeral directors and private crematoriums, as well as people who provide support to those who have been bereaved. FEA seeks to offer reassurance to those in the industry that payment for services will be met in a timely fashion. It also seeks to remove some of the financial stresses and anxieties experienced by bereaved family members which in turn may reduce the need for them to seek support for debt or other related issues. Tackling funeral poverty, and ensuring that all individuals are treated with dignity, fairness and respect are at the core of FEA.

The Scottish Government believes that understanding and learning from the experiences of individuals and organisations that come into contact with the current benefits system is vital to developing FEA and ensuring its effectiveness over time. To this end, a consultation exercise was developed which was accessible and would allow input from as broad a range of interested parties as possible.

The Consultation

Prior to developing the consultation, the Scottish Government gathered views in a number of ways including:

- from the FEA Reference Group, which was established in March 2016. The group met nine times to help gather evidence, bring a variety of informed perspectives and provide feedback on proposals;
- through the Social Security in Scotland Consultation which ran from July to October 2016. The section on FEA received 156 responses from both organisations and individuals;
- during three roundtable meetings and at the National Conference on Funeral Poverty in Autumn 2016;
- from Experience Panel members; and
- by meeting individual organisations to discuss specific areas and interests.

Building on these activities, illustrative regulations were developed that were issued to the Social Security Committee, and the Delegated Powers and Law Reform Committee, of the Scottish Parliament in December 2017. These were also shared, with a request for feedback, with the FEA Reference Group and through the Social Security Newsletter. On finalisation, these draft regulations were opened up for wider consultation. The consultation opened on 17 May 2018 and ran for fourteen weeks.

The consultation was open to all interested stakeholders and, to ensure that it was as accessible to as broad range of interested parties as possible, a number of alternative response mechanisms were put in place. This included options to respond in writing via the Scottish Government's online consultation hub Citizen Space, by post or email, through interviews (either face-to-face or by telephone) or through group sessions, where individuals could speak directly to researchers about their experiences and views on topics covered in the wider consultation.

Respondent Profiles

A total of 41 separate responses were received, 34 (83%) on behalf of organisations and 7 (17%) from individuals. All of these were received in writing, either directly via Citizen Space, or by email to the Scottish Government.

All respondents who contributed written responses were asked to submit a Respondent Information Form (RIF) alongside their consultation response, indicating if they were willing for their response to be published (or not), either with or without their name. All but two respondents indicated they were content for their response to be published, and 26 (63%) were content for their name to be disclosed.

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. The forum recognised their stakeholders had an interest in the new Social Security Scotland provisions, and specifically in the new FEA benefit. The

event provided an opportunity to ensure the views of ethnic minority older people were heard within the FEA process at policy, legislative and delivery stages¹. Eight individuals contributed partial written responses on feedback sheets while attending the event and these, alongside written summaries of round table discussions held on the day, were included in the analysis.

Report Presentation

The consultation included 14 questions. The first three questions focused on whether the draft regulations would meet the specified policy intentions as well as views on any perceived unintended consequences of the regulations or gaps in the proposals. The consultation also asked more focused questions on the application process, eligibility and communications linked to the administration of FEA. Finally, respondents were asked to consider any impacts of the proposed changes on individuals and businesses.

All but two questions had both a closed question component asking participants if they agreed/disagreed with the proposals as set out, as well as allowing respondents an opportunity to elaborate or provide reasons for their closed response. The two open questions related to impacts, and invited free comments.

All responses were read and logged into a database and all were screened to ensure that they were appropriate/valid. None were removed for analysis purposes.

Closed question responses were quantified and the number of respondents who agreed/disagreed with each proposal is reported below. Comments given at each open question were examined and, where questions elicited a positive or negative response, they were categorised as such. For most of the questions, respondents were also asked to state the reasons for their views, or to explain their answers. The main reasons presented by respondents both for and against the various specific proposals were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support and other related comments. Verbatim quotes were extracted in some cases to highlight the main themes that emerged. Only extracts where the respondent indicated that they were content for their response to be published were used. Responses to each of the questions are summarised below, in the order that they appeared in the consultation document.

¹ Many delegates had English as their second language, and the other languages of the individuals in attendance included Chinese, Urdu, Punjabi, Hindi, Bengali, and Gujarati. Individuals were assigned to one of 11 tables according to their language requirements and a Scottish Government official captured the discussions, using a translator when required.

Research Caveats

Narrative feedback from respondents is presented alongside a summary of the number of respondents who agreed or disagreed with each of the questions, or who provided substantive responses to the more general questions. Raw numbers are presented alongside percentages, for ease of interpretation although percentages should always be interpreted with caution, since they relate to small actual numbers of responses. Due to the small number of responses received overall, it was also not appropriate to provide disaggregated analysis by respondent 'type' e.g. individual, voluntary sector organisation, funeral industry response, etc. As a guide, where reference is made in the report to 'few' respondents, this relates to three or less respondents. The term 'several' refers to more than three, but typically less than ten.

It is also important to note that the way in which the consultation questions were asked introduced some inherent bias into the findings presented here. While respondents were asked to indicate their overall agreement/disagreement or support for different proposals, only those who disagreed or provided no support were asked to explain why. The Scottish Government framed questions in this way as, while supportive comments in relation to the regulations were welcomed, the key reason the questions were asked was because it was keen to identify any potential issues with the regulations so Scottish Ministers could consider if they could be improved.

This means that there is a negative bias in the data, with most of the feedback offering negative sentiments or justifications against the proposals. While some who did support the proposals set out in the draft regulations chose to offer some open-ended explanation as to why, this was not encouraged by the wording of the questions. While the findings presented below may, therefore, highlight mostly the perceived gaps or weaknesses of the draft regulations, it is important to remember the large numbers of people who supported the proposals too. Indeed, all but one question attracted more positive than negative responses when considering the closed responses only².

Despite most respondents being willing for their names to be published alongside their response, a decision was made to anonymise all responses in the final reporting. Similarly, where verbatim extracts have been included in the report, these have also been anonymised. A full list of responses with affiliations is published separately by the Scottish Government.

Finally, while the number of responses to the consultation was encouraging, and engagement in the wider consultation activities was also strong, it is important to remember that this report presents only the views of those who contributed, and should not be considered as representative of the wider stakeholder population, nor should they be generalised too broadly. There will, inevitably, be a wide range of responses to the proposals set out which may never be captured by a consultation

² For Question 3, equal numbers of respondents provided positive and negative responses

exercise of this kind as some people choose not to engage. That being said, every effort was made to make the consultation as accessible as possible, and so the views reflected here do provide a rich summary of what some of the main responses to FEA are likely to be in the wider stakeholder community.

General Perceptions of the Regulations

Policy Intentions

In delivering FEA, it is the intention of the Scottish Government to improve the experience of bereaved families by providing those on low incomes benefits with a contribution towards funeral costs. The intention is that this will help both in the short term to alleviate immediate money concerns as well as removing long term negative effects from unsustainable debt which may otherwise result from having to pay for a funeral. This is often referred to as ‘funeral poverty’.

Q1. Do you think that the draft regulations (Annex A) are likely to meet the policy intent set out in this document?

	Number	Percentage
Yes	29	71%
No	5	12%
No response	7	17%
Total	41	100%

The majority of respondents indicated that the regulations were likely to meet the policy intentions as set out. Only five respondents suggested that they may not.

The main counter view expressed was that, while the draft regulations did go some considerable way to meeting the specified policy intentions, the set payment amount was not adequate when considered alongside the actual costs for cremation or burial. Respondents indicated that the proposed £700 one-off flat rate part of the payment was inadequate and that there would still be a gap between the FEA and the actual costs incurred by most families. Many also highlighted that this had been frozen since 2003. The real term value should be increased, it was suggested, or provisions made for an uplift in real-terms value:

“Broadly, we welcome the introduction of the Funeral Expense Assistance Payment, and particularly welcome the commitment to annually uprating the payment, to the widened eligibility, and to the more efficient and less intrusive process for claimants that is being proposed... We do, however, have some concerns that - while there is a welcome commitment to annual uprating - the current payment of £700 has been frozen since 2003 and is therefore not reflective of current funeral costs. If the payment is not sufficient, this would mean the policy intent as set out is not fully met.”

One respondent noted that a review currently being undertaken by HM Inspector of Funeral Directors was yet to conclude and that the findings from this review may provide more evidence around the actual cost implications of burial and cremation

for the bereaved, and which might provide a clearer evidence base on which the Scottish Government could adjust its flat rate payment amount. The same respondent also felt that opportunities had been missed to consider other funding streams to support FEA, including recouping money from inheritance taxes and other public services (although this was a lone view).

Others commented that while FEA provided a suitable solution for addressing funeral poverty, it was reactive in its approach and the Scottish Government could be more pro-active in addressing the root causes of funeral poverty, to remove or alleviate the need for such assistance:

“These draft regulations only begin to reach Funeral Affordability whereas the opportunity was there to do so much more and better.”

Indeed, comments were made throughout that the draft regulations did nothing to reduce the proportion of people living in poverty in Scotland and that this was perhaps an opportunity missed. Such efforts needed to be made in conjunction with those working in the funeral industry (funeral directors, local authorities and private operators) in order to succeed. Specifically, it was suggested that it would be ineffectual if charges by these parties rose as a direct response to the new support being put in place and that some means of monitoring, regulating or controlling increases in prices in the industry was required. If funeral costs continue to increase over time, FEA alone will be insufficient to address funeral poverty, it was suggested. Indeed, one respondent indicated that FEA may be perceived to demonstrate an acceptance of authorities’ *“often unjustified increases to fees”* rather than the regulations including something to challenge the costs.

The granting of FEA could also be counterproductive and lead to increased stress, it was suggested by one respondent, if there was any uncertainty in the minds of those who applied for the assistance around whether or not it would be granted:

“...the draft regulations do not address our key concern, namely, that the current system causes additional distress to bereaved families by requiring them to undertake financial commitments without information on whether they will receive an award. The £700 funeral expenses cap, despite the commitment to an annual uprating, remains inadequate to pay for the full costs of a funeral.”

While the Scottish Government’s commitment to develop clear communications to make it easier for all parties to better understand eligibility criteria was welcomed, there remained concerns that some vulnerable families may still enter into contracts with funeral directors and their application be subsequently denied, adding significant stress and resulting in debt for families at what is already a very difficult time:

“A better system needs to be put into place to screen applicants for their eligibility prior to entering into a contract with a funeral director. This would reduce the number of refusals, the unexpected debt faced by bereaved people and the bad debt experienced by the funeral sector.”

One organisation also noted that, while the policy intention was clear and strong, it was not clear if the new Social Security Agency would have the necessary and ongoing capacity and culture to deliver fully and consistently on that intention.

On the whole, however, respondents noted that FEA was an improvement on the current DWP benefit and welcomed that more people would be eligible to receive FEA than currently receive Social Fund Funeral Expenses Payments (FEP). Most also felt that the draft regulations were a significant step in the right direction towards achieving the intentions set out, although one respondent suggested that only time would tell.

Q2. Can you identify any potential unintended consequences of the regulations?

	Number	Percentage
Yes	15	37%
No	20	48%
No response	6	15%
Total	41	100%

Over a third of respondents indicated that there may be potential unintended consequences that may arise from the regulations.

In several cases, respondents echoed earlier comments made that the £700 flat rate part of the payment would be insufficient and not negate pressures on bereaved families unless the gap between the level of payment and funeral costs was closed. Stress and debt would continue to affect low income families unless this was addressed, it was suggested.

Other specific concerns included potential for arguments to arise among surviving family members regarding the payment and risks that no-one in a family would apply, leaving local authorities having to arrange more funerals as a result, and without means to recover the costs.

Similarly, it was suggested that the proposals did not take sufficient account of discrepancies which might occur between initial quotes for costs of funerals and final accounts, since clients may change plans between the point of engaging service providers and the final service taking place. This may mean that costs are higher than originally expected and that original applications may not cover the final costs. The fact that applications were likely to occur long after the cremation/burial also means that some families will not know for certain if they qualify for FEA. Therefore, arrangements may be curtailed or affected negatively by remaining fears, either on behalf of the organising family or service providers, that monies will not be available to pay.

A question was raised around how cases would be handled where people had chosen to have funerals very far from home which would incur very high travel costs. As such, it was suggested that the uncapped element for fees/transport in the proposed regulations may be subject to misuse. One organisation recommended that the uncapped element be extended to include all of the cremation/burial fees, lair cost, internment cost, transport over 80km and (the new element) ceremony venue costs. Increasing travel payments would help those living in rural communities, in particular.

The complexity of family relationships had also not been fully explored, it was suggested, and some situations may arise where eligibility was denied but families were still much in need of support (e.g. for non-biological parents/carers, non-married partners, families living disparately in other parts of the UK, etc.) Many families who were not eligible but may still struggle to meet funeral costs had perhaps been overlooked, it was suggested. Indeed, a number of other potential unintended consequences were identified relating to eligibility, covering entitlement for students, asylum seekers, migrants, claimants subject to DWP sanctions, offenders serving custodial sentences, specific religious groups, claimants with learning disabilities, claimants who have transitioned away from benefits, and workers on temporary contracts who have relocated to Scotland from other parts of the UK. These are discussed in more detail in the following chapters.

At the organised event, comments were made that the award of FEA may deter some other family members from making a contribution to the costs which they may otherwise have done. This may have the unintended consequence of meaning that less funds were available collectively to provide the funeral desired. This may apply in some communities more than others including, for example, the Chinese community where help/support by donations was common. Similarly, it was queried whether such donations would impact on whether or not an individual could apply for FEA.

There was also some discussion around funeral insurance among delegates at the event, specifically in cases where a policy is taken out to pay for the majority of the burial/cremation, would applicants then be able to apply for FEA to pay for the remainder. Again, this was seen as more relevant to some communities than others, with the Chinese community perhaps more likely to take out funeral insurance policies compared to others.

One organisation stressed that FEA needed to be tested fully before it becomes operational and welcomed the Scottish Government's proposals to do so. This testing should be done collaboratively, it was suggested, with the funeral industry sector to ensure that the application process is as efficient as possible, and that systems and processes are aligned, wherever possible:

“Working closely with the funeral industry on the design of the payment/invoicing system will ensure that payments can be made as quickly and efficiently as possible.”

Again, one respondent noted that unintended consequences would only become clear following implementation.

Q3. Can you identify any gaps in the regulations?

	Number	Percentage
Yes	17	41.5%
No	17	41.5%
No response	7	17%
Total	41	100%

Half of those who provided a written response to this question offered suggestions for gaps in the regulations.

Again, many respondents stressed that one of the gaps was the Scottish Government's failure to raise the FEA flat rate payment, despite committing to increase payments with inflation:

“Whilst an increase to the flat rate payment in order to protect against inflation is most welcome, there remains a question mark over the value of the basic flat rate payment. It is highly questionable whether this provides for a satisfactorily dignified funeral. It is of vital importance that the calculation of the payment is reviewed regularly.”

One respondent suggested that a new element should be introduced into the cremation/burial fees element to cover some ceremony costs where this is not included within the cremation/burial fees. This may need to be capped (e.g. £200), similar to other elements.

One respondent also suggested that opportunities had been missed in the regulations to guarantee that funeral directors could be paid directly, to ensure that debts were not being left with them (discussed more below). While others agreed with this sentiment (here and in response to other consultation questions), it was also noted that the introduction of any such direct payment without client consent would need to be closely monitored so that it was not abused by funeral directors:

“It makes sense for the default payment to be to funeral directors unless otherwise specified. However, some funeral directors are known (anecdotally) to charge more where FEA is expected to be drawn down to ensure that maximum available funds are drawn down without costing the client any more. There should be a system within the regulations that funeral directors found guilty of such misconduct around the Funeral Expenses Payments would become ineligible to receive payments directly.”

Several comments were also made for further widening eligibility including:

- Council Tax Reduction (CTR) could be included as a qualifying entitlement. This would provide some protection for those who miss out on UK entitlement due to application of the two Child Policy not also losing out on Funeral Expense Assistance, it was suggested;
- Carers Allowance could be included as a qualifying benefit, as not all carers receive Income Support. This would help to cover situations in which the applicant for FEA will have been receiving Carers Allowance up to the death of the cared-for person but neither they or the person who has died was receiving any of the qualifying benefits;
- low-income students, in full-time higher education, many of whom are not eligible for most of the qualifying benefits. Entitlement to FEA for full-time students, who are in receipt of the higher SAAS bursary rate, should be considered; and
- provision for those who are not in receipt of benefits, for example, those in work, and who are in receipt of a low wage. Measuring poverty in terms of receipt of benefits could exclude the working poor and increase poverty, it was suggested.

The other main gaps were themed around communication. One respondent suggested that there was insufficient detail around how potential applicants would be made aware of FEA and two others questioned how people would be directed towards applying. Questions were also asked around who would hold the application forms. The success of FEA would be dependent on people finding out about it, and so the regulations needed to more clearly state how this would be achieved. Similarly, more detail was needed on how communications would be handled with local authorities and funeral directors, to make clear to them how much money claimants may receive and allow them to manage fees accordingly.

Other specific gaps highlighted by just one respondent each included:

- the potential for claimants to received payment directly into Post Office accounts, instead of bank or credit union accounts only. This would make the payment accessible to a wider group, it was suggested;
- that the definition of residence does not appear to take account of an applicant who is homeless;
- that the habitually resident clause may exclude people who move to provide care for a family member who dies, and who may be equally or even more likely to experience funeral poverty, especially if they are not entitled to other benefits or other forms of support; and
- that a coffin be viewed as an 'essential' cost rather than an 'additional' cost.

Finally, one respondent reiterated that gaps would only become clear following implementation.

Eligibility for Funeral Expense Assistance

While the overarching intention of FEA is to reduce financial and associated burdens on those most economically vulnerable families, the Scottish Government also wants to ensure that the process to determine eligibility and provide support is handled as sensitively as possible.

The intention is to reach more people with the benefit, improve the application process and make eligibility clearer to people in advance of application. As such, the Scottish Government has already committed to processing completed FEA applications within ten working days, responding to feedback that the current DWP process takes too long to reach a decision.

Prior to launch, the Scottish Government also plans to develop clear communications to ensure that applicants and the services that they come in to contact with are aware of the new benefit; the eligibility criteria; and how to apply for it. The second part of the consultation sought views on the application process, eligibility criteria and communications that would support delivery of FEA.

Applications

The application window for FEA opens on the date of the death of the person whose funeral is being arranged and closes six months after the date of the funeral. An application can be made at any point during that window.

Q4. Is the application window for FEA clear?

	Number	Percentage
Yes	31	76%
No	5	12%
No response	5	12%
Total	41	100%

Most respondents felt that the application window for the FEA was clear, and supported the extension of this window to six months (from the three month period that applied until 1 April 2018). It was generally felt that six months was a suitable timescale for the majority of claims, and that this would allow applicants to seek independent advice and support with the application process.

Despite the overall support for the application window, some respondents were concerned that there needed to be some flexibility over the deadline for submitting applications. They felt that late claims needed to be considered, either in exceptional circumstances and/or for the most vulnerable. One respondent also suggested that, should late claims not be considered, then the application window required to be extended as a safeguard for the most vulnerable.

It was also highlighted that some religious groups may find the application window difficult to accommodate. For example, it was suggested that, culturally, Muslim widows (women) may observe four months of mourning where they don't leave the house. It was felt that extending the deadline for claiming up to one year after death would accommodate this.

It was also suggested that, in some cases, people may be unaware of the available benefits and/or their eligibility, which could impact on the timeliness of applications (and constitute a legitimate reason for the consideration/payment of late claims). Strategies were required for awareness raising, including promotional strategies to increase the uptake of all Scottish Government benefits, specific advertising campaigns for the FEA, and working with advice services and partner organisations to ensure the correct information is given to individuals:

“... it will be essential for the Funeral Expense Assistance to continue to be promoted as part of a Scottish Government benefits take-up strategy in order for individuals to be aware of their entitlement.”

“...the funeral director should be able to provide information as well as assistance on funeral payment application. The religious and community organisations, registrar of death office should also have information to provide assistance on funeral payment application.”

A few respondents questioned when the application process should/could be opened and closed, with some noting that, for some claimants there could be a delay in being informed of the death, for example, where the next of kin are in prison, or are travelling/uncontactable, or have diminished capabilities. In such circumstances it was felt that greater flexibility/fluidity in the application dates may be justified:

“The new rules could be clearer by stating the six-month window is open from the date of death or the date when the applicant has been informed of the death.”

While some respondents agreed that the application window should not/could not be opened before the death, others felt that in certain circumstances this should be considered. One felt that, where medical advice indicates a condition is terminal, and death imminent, allowing an early application could afford terminally ill patients some comfort, provide grieving families with a decision at an earlier stage, allow for funeral arrangements to be made sooner, and take an additional burden off of families upon the death itself. Anxiety around funeral plans and costs often commence before the date of death where terminally ill patients are concerned, and it was felt that these unique needs should be taken into consideration.

One respondent also noted that some religions, particularly Islam and Judaism, have particular cultural expectations around death, which may include a desire for the burial to take place within 24 hours after death. They had concerns, therefore, that the current draft and stipulated timescales could disadvantage such families as they will, on average, have less time to submit an application.

There was some confusion over the terminology used among those who attended the organised event, with many indicating that they did not understand the term 'window' and feeling that the language needed to be simpler, for example, using 'time period' or 'length of time' instead. Others at the event also appeared to be confused about the timing/purpose of the application window, with some respondents suggesting they understood this to mean they could not apply until six months after the funeral.

Other specific areas of concern and/or clarification sought by individual respondents included:

- why the assessment day is the day it is received rather than the day it is sent. This respondent felt that someone completing the paperwork cannot sign a declaration saying it is accurate if the day in question is in the future;
- whether the 'responsible person' would have to first enter into a contract with a funeral director before being able to claim; and
- whether an invoice would be required to submit a claim. This respondent felt that there was potential for an award to be made before the funeral takes place and hence before a funeral director has issued their invoice with the final amount.

Relationship to the Deceased

To be eligible, the person applying for FEA must be responsible for paying for the funeral, and is usually the nearest relative or friend of the person who has died.

Q5. We have proposed that the applicant must usually have the nearest relationship to the person who has died, and in exceptional family circumstances, such as estrangement, that they explain to Social Security Scotland why they should be considered to be the appropriate person who will take financial responsibility for the funeral. Do you agree with this approach?

	Number	Percentage
Yes	28	68%
No	6	15%
No response	7	17%
Total	41	100%

Again, most respondents agreed with this proposal, feeling it was appropriate in most circumstances. Some also noted that the proposed hierarchy used in the Burial and Cremation (Scotland) Act 2016 was helpful in such situations, with one respondent suggesting that parts 65(3) to 65(6) of this Act should be transposed into the FEA regulations to ensure ease of reference.

The main comments and concerns with this proposal focused on how strictly the hierarchy of relationships would be enforced, stressing that this may not always be appropriate, and queries around how 'exceptional family circumstances' would be defined.

Several respondents highlighted examples where the hierarchy would not identify the most appropriate person, or indeed the person who wished to take responsibility for the funeral. They noted that families can be complex and relationships can be complicated and fluid. For example, step-parents or kinship carers may take on the role of arranging a funeral for a child rather than an estranged parent, a partner of many years may not be eligible as the hierarchy might identify an estranged spouse, the parent of a young adult may not be eligible where the deceased had lived with a partner, a parent of the deceased wishing to arrange and pay for the costs of a funeral may not be eligible where there is an adult child, etc. It was also noted that, the eligible person based on the hierarchy may not want to arrange the funeral or pay for it, even where they were not estranged from the deceased.

One organisation also felt that ranking the partner, parent and children of the deceased, was problematic. Rather, they felt that these three relationships should hold equal weighting on the hierarchy list, with the individuals concerned able to choose between themselves who was best placed to organise the funeral, without having to evidence 'exceptional circumstances'.

Generally, it was felt that, while the hierarchy provided a helpful guide/starting point, there needed to be flexibility built into the regulations in relation to how this was applied in practice. Insufficient information had been provided around exceptional circumstances, it was felt, and the terminology could be adapted to be more flexible/inclusive:

"It is important that the bar for what is accepted as exceptional is not set too high and it may be that the word exceptional is replaced with a term such as 'reasonable in the given circumstances'."

Other aspects that were particularly welcomed, however, were the removal of the need to assess other family members financial circumstances within the application process, and the acknowledgement and eligibility of long-standing friends for the FEA. Although it was suggested by one respondent that, in relation to a child's funeral the definition of "a friend of long standing of the child" should perhaps be extended to "a friend of long standing of the child or the child's family", others stressed the importance of allowing community leaders to apply where no family members were available (although some were concerned about how this would be defined/enforced).

Some respondents suggested that clarity was required around who would be responsible where more than one person was available within the same relationship category. Others queried how the responsible person would be selected if there was either a dispute within the family and nobody had entered into

a contract with a funeral director or where more than one family member applied. One of these respondents also queried the status of those with 'Power of Attorney'.

Some event participants suggested that paying the money to a member of the family was risky, as this person may not ultimately pay for the funeral. Rather they felt that the money should be paid directly to the funeral director (discussed more below); while the application should still be made by the family they felt there should be a section of the form for the funeral director to fill in so they can be paid directly.

Other comments made by separate respondents included:

- if the person eligible is under 16 (e.g. the child of a deceased single parent) then they should be, a) able to nominate another person as the main contact and, b) be automatically eligible for FEA;
- that clarity is needed that the person eligible for FEA does not have to be the person in contact with the funeral directors;
- that, while there was reference regarding the need to consider not only the applicant's circumstances but also those of their partner in other parts of the consultation, this was not revisited in this section of the consultation document, but should have been;
- that the consultation covered eligible applicants in the case of a child's death, but that it would be helpful to link this with the intention to remove the local authority/private provider charges for a child's burial or cremation (and to also ensure that this is part of the promotion of the new FEA benefit); and
- that the proposals, as presented, risked fraudulent claims.

Again, it is important to note that the majority of respondents agreed with the proposals as set out and these views were offered by only a small number of individual respondents.

Residence

In line with the current UK system, an FEA applicant must be habitually resident in Scotland and the deceased person must have been ordinarily resident in the UK. Recognising the complexity of different family relationships and living arrangements, the Scottish Government welcomed feedback on the treatment of complex residency cases as part of the consultation.

Q6. We have proposed that applicants must be habitually resident in Scotland, and the person who has died must be ordinarily resident in the UK to qualify. Do you agree with this approach?

	Number	Percentage
Yes	29	70%
No	6	15%
No response	6	15%
Total	41	100%

Respondents were largely supportive of these proposals, and generally this was considered to be a reasonable and sensible approach which should not cause applicants too much difficulty as it was consistent with the requirements for the qualifying benefits.

It was felt by some respondents, however, that the language and terminology used may cause some confusion to claimants and may lead to misinterpretation and some inappropriate applications (and, therefore, refusals). Several respondents suggested certain terminology needed to be more clearly defined (i.e. ‘properly awarded’, as well as ‘habitually’ and ‘ordinarily’ resident), and that these definitions needed to be included within the regulations. Respondents also felt there was a need to have clear guidance for both decision makers and applicants around the residency tests:

“...the wording is very confusing and should be made clearer... it is a complex area and needed to be simpler, straight forward and made easy to understand as people involved will be going through emotionally challenging and distressing times.”

One respondent also noted that linking the habitually resident requirement to that used by the DWP for other qualifying benefits could lead to confusion over eligibility for FEA. They noted that the draft regulations state that an applicant must be “habitually resident in Scotland” in order to receive FEA, yet the consultation document also notes that “In practice, the residence conditions attached to each of the qualifying benefits or tax credits may be sufficient to establish Scottish residence.” It was felt that, as the DWP’s habitual residence test requires applicants to be resident within the Common Travel Area (UK, Republic of Ireland, Channel Islands or Isle of Man), this could cause confusion for those that have just moved to Scotland:

“There is the potential for this to cause confusion in relation, for example, to applicants who have recently moved to Scotland from another part of the UK. Such applicants might be habitually resident in the UK but have only just arrived in Scotland. We would suggest applicants should be habitually resident in the

Common Travel Area and living in Scotland, e.g. as evidenced by having qualifying benefits registered at a Scottish address.”

Some also felt that the habitually resident requirement may be too restrictive, potentially excluding some individuals, such as students from elsewhere in the UK now living and studying in Scotland, those from elsewhere in the UK now living and working in Scotland but on temporary employment contracts, homeless people who are not claiming any qualifying benefits, and those left without a right to reside, for example, as a result of a relationship breakdown and/or domestic abuse or as a result of DWP error. Similarly, some respondents noted that care was required as to how eligibility is established for those who have moved to Scotland recently and/or temporarily to care for relatives, with concerns that this group would be in need of FEA but may not meet the habitual residence test.

Concerns were also expressed by some respondents about the eligibility of particular vulnerable groups. It was felt that the residence requirements would exclude refugees, asylum seekers, and families of illegal immigrants. It was also noted that appeals and Home Office decisions regarding the right to reside could take longer than the FEA application window, and that provision needed to be made for this. It was suggested by one respondent that, while the FEA may not be a suitable conduit for assisting such groups with funeral expenses due to social security and immigration rules, other avenues for support could be considered:

“...the Scottish Government has previously funded the Scottish Refugee Council's Destitute Asylum Seeker Service (DASS) to provide legal and accommodation support to persons subject to immigration control and, taking this into consideration, [we] suggest that the Scottish Government consider establishing a separate, independent fund to assist destitute asylum seekers with funeral costs, via the DASS.”

One organisation questioned the habitual residence test on similar grounds but additionally pointed out that the test is administratively burdensome:

“In our experience, the habitual residency test, which is used to determine habitual residence, is difficult to administer and decisions are often subject to challenge. It relies upon the applicant being able to demonstrate their right to reside in the UK, for example, by being in paid employment. Some vulnerable groups, including single parents who are unable to work because of caring responsibilities, as well as people experiencing homelessness can struggle to pass the tests or provide appropriate documentation to support their claim and risk being excluded from support under FEA.”

The same organisation commented that the ordinary residence criterion was also more restrictive in terms of who can access support compared to the existing UK wide benefit and that it could have negative consequences for Scottish local authorities, as a consequence:

“We are concerned that in such cases where a family is unable to pay for the funeral of someone who was not ordinarily resident before they were deceased has no assets then the cost would presumably fall to the local authority. This is an additional burden on already stretched local budgets.”

Another respondent also questioned whether the proposed residency requirements and reliance on qualifying DWP benefits was consistent with the aims and principles of the Scottish Government’s proposed anti-destitution strategy and work to mitigate the impact of UK Government ‘hostile environment’ policies.

Three respondents also discussed the difficulties around the exclusion of international costs. One issue related to the funerals of UK/Scottish citizens who had been resident abroad and the financial difficulty this could place on family members resident in Scotland. It was suggested by one respondent that consideration should be given to the possibility of awarding a fixed contribution for funerals of Scottish citizens who had either been resident abroad or were resident in Scotland but died while abroad and where the funeral takes place in the UK or abroad. The other issue raised related to the costs of repatriating a body from outwith the UK, with one respondent noting that many travel insurance policies have exemptions for deaths that occur as a result of excessive alcohol consumption or terrorist attacks. They felt that, if this could not be included with FEA, then perhaps a separate ‘Repatriation Fund’ was required.

Similarly, when this proposal was discussed at the consultation event, many respondents were confused about the differences between habitually and ordinarily resident and which applied to the deceased and applicant, as well as the exclusions and restrictions over what costs could be met. This included whether applications could be made for those resident and/or funerals taking place in Scotland versus the rest of the UK, for those resident abroad and needing repatriation (either to or from Scotland), for funerals taking place outwith the EU, for parents visiting children resident in Scotland and dying during the visit, etc.

Additional comments provided by individual respondents included:

- the need for consideration of family dynamics (where no agreement has been reached and family members are competing to lead the funeral arrangements) and discretion where two applications are made by relatives at the same relationship level; and
- the residency requirements being administratively complex to implement.

Qualifying Benefits

FEA is targeted specifically at those who are in poverty and those who may be tipped into poverty by having to pay for a funeral. To do this, eligibility will be dependent on the applicant (or their partner) being in receipt of specified UK Government benefits or tax credits.

One such benefit is Universal Credit (UC) but, in developing the regulations, it was felt that the monthly variations in UC payment calculation and entitlement may

make it unclear to some potential applicants if they are able to apply for FEA. To reduce ambiguity, it was proposed that the eligibility test be extended over two months.

Q7. We propose that qualification by being in receipt of UC should be an award of more than £0 in the month before or the month in which the application is made. Do you agree with this approach?

	Number	Percentage
Yes	23	56%
No	9	22%
No response	9	22%
Total	41	100%

More than half of respondents agreed with this proposal and a further nine gave no response.

Among those who did not agree with this proposal, the main sentiment was that a two-month window was not long enough to give a true reflection of the claimant's position.

Two organisations suggested that the extension be widened further to six months to provide a stronger framework to support the most vulnerable individuals who may be transitioning off of benefits and who may still be likely to experience funeral poverty. Two respondents suggested four months as a fairer extension period. In essence, given that FEA rules allow for applications to be made between the date of the funeral and up to 6 months after, it was suggested that greater flexibility to the UC criteria could be built in (i.e. beyond two months).

Two respondents raised the potential for some claimants to be overlooked by the proposed approach if two consecutive pays were received within one assessment period (due to 28 day pay periods of those paid early due to public holidays, etc.) This would leave them unable to claim FEA until the following month. This would be avoided if consideration was given to the month in which the claim was made and the month prior and would have the added advantage that it would negate people having to make a second application if the first was refused (also avoiding the additional administrative processing this would entail).

One respondent suggested there would be a need for retrospective assessment in the event that a £0 UC award was made which was later increased after appeal. Two others suggested that it needed to be clearer that this proposal applied to UC prior to any deduction or sanction having been applied (which may have resulted in the payment amount being zero).

Some respondents felt that this proposal had not been explained clearly enough in the consultation and that greater clarity was required (not everyone understands UC, it was suggested), while another commented that, while the commitment to extending the eligibility test had been included in the consultation, it was not in the draft regulations nor in the Social Security (Scotland) Act 2018. This may raise concerns about the stability of the commitment, it was suggested.

There was also some confusion around the wording/meaning of this question among those attending the organised event. Several did not understand the question, nor how the UC system worked, and others simply expressed that the proposal seemed unfair and may discriminate against those who worked but still had low incomes (especially young adults trying to pay for funerals of parents). Participants questioned why the eligibility criteria were not broader and also queried if it would be possible for someone to apply for UC after the death, in order to also qualify for FEA. A more general concern was also raised about people seeking other qualifying benefits in order to claim FEA, meaning that less money may be available for each individual overall.

Finally, one view was expressed that having UC as a qualifying benefit with no further qualification should suffice (since adding a qualification may cause some confusion), while another commented that people in receipt of certain benefits should automatically receive FEA.

Overall, despite some confusion around the UC system and some feeling that eligibility criteria should be widened, the two-month timescale for assessment was considered fair.

Q8. Is the qualifying benefit / tax credit eligibility clear?

	Number	Percentage
Yes	28	68%
No	6	15%
No response	7	17%
Total	41	100%

Again, most people felt that this proposal was clear and offered their support, and only six suggested otherwise, although there was also some confusion expressed among those attending the organised event.

In most cases people commented that, although the eligibility criteria were clear, they felt that the rules should be extended to account for exceptional cases where FEA may be appropriate, including those with very low incomes but who were not in receipt of benefits. Examples included students, homeless, prisoners, migrants, self-employed, people aged 60 or over (especially those on Single-tier State Pension), mixed age couples (where one is not eligible for Pension Credit), couples

where the non-working partner is severely disabled, those living in care homes, those on parental leave and those on statutory sick pay:

“All that is fine as far as it goes, but what about persons who qualify for none of these benefits but has an income less than these benefit levels?”

The appeal process and tribunal system should be designed in such a way that Social Security Scotland can apply discretion in such scenarios, it was suggested, to also offer assistance to those without an alternative means of paying for the funeral of a loved one.

Others suggested that a wider range of additional benefits should render someone eligible, including:

- legacy benefits (such as Severe Disability Allowance or Incapacity Benefit);
- those in receipt of contribution based benefits in the last six months;
- Council Tax Support, Support for Mortgage Interest and Council Tax Reduction receipt; and
- people on Maternity Allowance, Statutory Maternity Pay, Carers Allowance, and Statutory Sick Pay (not just where the death was of the unborn/new born).

“We would request that you give further consideration to widening the qualifying benefit rule to include women in receipt of Maternity Allowance where they do not have a partner.”

Including these as additional qualifying benefits it was suggested would ensure that some of those most in need were not excluded. Indeed, one organisation suggested that having criteria that excluded some of the above may lead to some people who need to pay for a funeral seeking to switch their current benefit arrangements to UC specifically in order to qualify for FEA (leaving them worse off in the longer term).

One person suggested that including any working tax credit may be simpler to understand and be on a par with UC. Another suggested that someone who had previously been on a qualifying benefit but was technically no longer eligible because of the death (e.g. Working Tax Credit or Child Tax Credit) should still be considered eligible. One comment was made that under 16s (or under 18s) arranging a funeral should perhaps be eligible irrespective of their benefits or employment status.

At the event, some delegates expressed views that it should be the financial status/benefit status of the individual who had died, rather than the claimant/living relatives that should determine eligibility for FEA. Others suggested that using benefits as a gauge was less fair than using other poverty indicators.

Two comments were also received about the application period for FEA and how an individual's financial circumstances may change during that six-month period, meaning that greater flexibility may be needed. Again, while this had been indicated in the proposal documents, a more solid commitment to this kind of flexibility was needed in the regulations, it was expressed:

“Although the criteria are clear, we note that the period of application may be up to 6 months after the date of the death and this gives a period of time for a person’s circumstances to change as eligibility is determined at the time of application...the note on policy development states that it may be possible to make exceptions for the situation where a backdated award of a qualifying benefit has been made after the date of the FEA application window has passed. There is nothing in the draft regulations to reflect this policy intent.”

A solution was offered that paying for funerals as part of the Scottish Welfare Fund for emergency cases may prevent some people "falling between the cracks" under the proposed FEA:

“The issue of having an income which is marginally too high for entitlement, or not being in receipt a qualifying benefit, is addressed by the Scottish Welfare Fund guidance, which we believe should be applied to FEA regulations...The discretion about low income, is therefore a useful tool in identifying those who should benefit from FEA.”

Finally, one organisation highlighted that to be eligible for FEA, applicants must not only be eligible for one of the qualifying DWP benefits, but have 'been properly awarded' the DWP benefit. This raises a number of potential challenges, it was suggested, including cases where the person is eligible but has not claimed due to incapacity, not knowing they were eligible, or sanctions having been applied making them not qualify during the six-month FEA application window. Similarly, participants at the organised event sought clarity around whether someone could apply for FEA if they were eligible for the above benefits, but did not claim them.

A very specific cultural issue was also raised by attendees at the organised event. Some delegates pointed out that Asian culture dictates that a daughter is responsible for her mother and father and that a daughter's husband might be working while she might not be on benefits but the husband may refuse to pay for her mother/father's funeral. In such cases, there should be a means by which the daughter could apply for/qualify for FEA.

Overall, although the rules seemed clear, the main comments received indicated that more consideration needed to be made of people on low income/savings yet who are not on a qualifying benefit. Again, one comment was also received that a clear communication strategy was needed to ensure that accurate/accessible information is provided to the public regarding qualifying benefit/tax credit eligibility once FEA is rolled out.

Payments and Deductions

Payments

Under existing DWP rules, in the majority of cases, payment is made directly to funeral directors on behalf of applicants, although requests to be paid directly can be made, for example, if the applicant has already paid the bill. The draft regulations propose continuing this practice, with consent from applicants, making clear to all FEA claimants what the process would be.

Q9. We have proposed 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.

	Number	Percentage
Yes	34	83%
No	2	5%
No response	5	12%
Total	41	100%

The majority of respondents agreed with this proposal. Where they did not, the main reason given was that the need for consent seemed misplaced.

Some respondents questioned the need for consent and indicated that this may lead to some people still receiving FEA directly and not using it to pay funeral directors for unpaid bills:

“Clarity is sought on the procedure to be followed, when there is a bill outstanding, but the applicant does not consent to the payment being made into their own bank account.”

Others indicated that they had no objection to funds being paid directly to the applicant where they were able to clearly demonstrate that the bill had already been paid, although another stressed that proof of payment must also be confirmed by the funeral director prior to any monies being sent directly to the applicant (otherwise funeral directors may still find themselves out of pocket).

Reiterating earlier sentiments, there were also comments that this system could be abused by some funeral directors, who may increase costs deliberately to draw down additional FEA and that this should be monitored. Other measures to protect the system would include encouraging claimants to keep receipts of all services received, as well as funeral directors being asked to confirm that the claimant is known to them as the payee, to avoid non-paying estranged or wider family members claiming FEA when they have not paid for the services used.

Others simply emphasised that a flexible system should be in place that gives people a choice in how the payment is received, ensuring that all individuals are treated with dignity and respect:

“...it is important that individuals are treated with dignity and given a choice in terms of how they receive their benefits. We believe that applicants should be given a choice of receiving the payment directly.”

More guidance may also be needed to cover cases where a funeral director had not been used, especially in minority ethnic communities where alternative community figures had taken on similar roles. For example, one person attending the organised event queried whether the mosque would be categorised as a funeral director and therefore able to receive the payment directly, as the mosque has a significant (though variable) role in arranging and carrying out some funerals. More consideration and consultation with minority ethnic communities may be required on this specific issue, it was suggested.

As with other areas of the consultation, comments were also made that this process needed to be clearly explained to applicants, including funeral directors being encouraged to communicate this to their clients early on. Overall, proposals to pay funeral directors directly in these cases was supported, and was seen as natural to continue with existing DWP practice.

Deductions from Payments

Under existing DWP rules, deductions are currently made for funerals of children where the child had assets in their own name, such as a Child Trust Fund (CTF). The Scottish Government proposed a move away from this practice in the illustrative regulations, to a situation of no deductions in such cases.

Q10. We have proposed not to make deductions from the payment award where there are assets in the name of the child who has died. Do you agree with this approach?

	Number	Percentage
Yes	35	85%
No	0	-
No response	6	15%
Total	41	100%

Everyone who provided a response to this question agreed with the proposal. Respondents particularly praised the proposal for including those under 18 instead of only those aged under 16 and that CTFs would be untouched (although some attending the organised event sought clarity around how ‘child’ was defined, and

also how CTFs worked). The Scottish Government was commended for what was perceived to be a 'goodwill gesture'.

Some caveats were cited, including the need to treat all cases on individual merit (e.g. in the case of very wealthy children, one respondent questioned whether FEA would be appropriate), and the need to ensure that care was taken to consider any monies/assets transferred to an under 18 for the purposes of money laundering, tax evasion, inheritance tax evasion or financial contributions for care.

Others commented that they would also welcome any future efforts to reduce other burdens for surviving family members in the death of a child, including unnecessary restrictions on service time and duration at crematoria, as well as removal or restriction of costs for registration and burials of people under the age of 18.

One comment was also made that it would be important to communicate policy intentions in this regard alongside the announcements on removal of local authority and private provider charges for children's funerals. Others attending the organised event suggested that greater clarity was also required from the Scottish Government around what was meant by 'assets' and that a clear distinction needed to be drawn between assets and savings.

One view against this proposal was presented at the organised event on the basis that it discriminated against people on the grounds of age. This was, however, very much a lone view.

Request for a Re-determination

Timescales for requests

Re-determination provides the right for an individual to ask that any determination is looked at again if they think Social Security Scotland has not made the right decision. Unlike existing DWP arrangements, the Scottish Government proposed that, in such cases, a fresh determination would be made, rather than a review of the original decision. It would also be made by a different, independent officer. Any request for a re-determination would, however, require to be made within 31 calendar days of an individual being notified of the determination (the original decision).

Q11. We have proposed that requests for an FEA re-determination should be made within 31 calendar days of receipt of notification of the original determination.

	Number	Percentage
Yes	31	76%
No	4	10%
No response	6	14%
Total	41	100%

Almost all respondents agreed with this proposal with only four offering views against. Those who did not support the proposal indicated that the re-determination period should be longer, with suggestions that it be extended to six weeks or even up to three months. The extension would help people to better deal with administrative demands placed on them during the grieving period (including any need for translation of documents and sourcing relevant papers from abroad, etc.):

“This would enable individuals to gather and submit further evidence, as well as being able to seek and receive independent advice if they need it.”

At the organised event, some commented that this point was particularly salient for those in communities who may choose to travel outside of the UK in the aftermath of a death, to visit wider family/friends, the risk being that people who were out of the UK might miss a letter determining the outcome of their FEA application, and would only receive the letter on their return to the UK, by which time it may be too late to request a re-determination. It was also suggested that there might be technological ways to reduce the possibility of this issue occurring, such as using text alerts or email in addition to hard copy letters to advise applicants of outcomes.

Others who supported the proposal also provided the caveat that there should be flexibility to allow the timescales to be extended in exceptional circumstances (especially where delays have been introduced by third parties). One organisation specifically highlighted that reference to 'calendar days' was unclear and that a less jargonistic and more easily understood reference point would be number of weeks or working days. The term 're-determination' may also be confusing for some, it was suggested.

One organisation suggested that it was difficult to reconcile the 31-day approach with the proposal that an individual may make an FEA application at any point within the 6-month application window. The six-month window was seen as necessary given that personal circumstances may be subject to change following the death of a loved one, and was seen as being flexible and welcomed. Unless the 31-day re-determination period also remained open for the same six-month period (and given that a re-determination will not be a re-examination of the original decision, but a fresh consideration of the FEA application) this flexibility may be counteracted:

“If the closing of the re-determination window has no bearing on an individual’s eligibility to make a new FEA application, we have no issue with this proposal. However, if it is the case that an applicant whose circumstances genuinely change will be prevented from making a second application simply because the re-determination window for an earlier application has closed, this would seem unjustifiably unfair.”

Another organisation expressed a view that this would only be acceptable if re-determination could be considered at any point up to a year after being notified of the original determination, where good cause could be established.

On a more general note, one organisation expressed a view that the whole re-determination process should become part of a single appeal process:

“Our suggestion is where a person appeals a decision that there is an option for the decision maker to reconsider their decision. However, in absence of a favourable revision the matter would then progress to an appeal without further action required from the claimant.”

Others simply offered support for the proposed re-determination process, welcoming in particular that a different independent officer would undertake the full process of making a new determination. In the main, this timeframe was considered to be proportionate and consistent with other benefits³.

³ Although not specifically covered by the consultation, one organisation noted the intention to set out at a later date relevant processes/requirements for valid applications, and suggested that further consultation on this matter be undertaken once proposals have been developed.

Timescales for processing

The regulations set out that, on receipt of a request for a re-determination of entitlement to FEA, Scottish Ministers should have 15 working days to make a fresh determination. This period is to be counted from the next working day after Social Security Scotland receives a re-determination request in the format required by it.

Q12. We have proposed that a FEA re-determination should be processed within 15 working days of receipt of a request. Do you think that is an acceptable time period?

	Number	Percentage
Yes	30	75%
No	5	11%
No response	6	14%
Total	41	100%

Again, most respondents agreed with the proposed timescales for FEA re-determinations to be processed, i.e. within 15 working days of receipt of a request.

Some suggested that the timescales should be extended, with one respondent suggesting 20 days as an alternative, comparable to other statutory response timescales. Some of those attending the event also suggested 31 calendar days was a more suitable time period.

In contrast, several others suggested that a shorter period may be more appropriate, and suggested 10 days, the same as the commitment to process applications in that timescale (one participant at the event simply suggested that re-determinations should be made as soon as possible). Shortening the re-determination period was seen as particularly important given that claimants in these cases will already have waited for the original decision to have been made, and would require certainty as soon as possible:

“We believe a re-determination should be treated with at least the same level of urgency as an initial application.”

Some suggested that the shorter time period was necessary to reduce undue stress and anxiety for claimants at a difficult time, and was thus better aligned with the Scottish Government’s policy intentions.

Overall, there was perhaps a lack of clarity as to why initial applications could be processed in 10 days, while re-determinations would take 15 days and there was some concern about the lack of clarity in the wording of this proposal in general. One organisation sought clarity around whether eligibility would be assessed based on the same day as the original application and one questioned what would happen

in the event of delays in getting support evidence or paperwork. Another noted that, whilst mentioned in the consultation document, these provisions do not appear directly in the draft regulations, and so clarity was sought on the intention to add them. Finally, one comment was received that, while the commitment to process applications in 10 working days was supported, the Scottish Government should be encouraged to publish data regularly to show the percentage of applications processed on time.

Other Comments

Although not directly answering any specific questions within the consultation, several comments were made by respondents that funeral costs have been increasing in the UK, above the rate of inflation, for a number of years. One respondent suggested that this has resulted from a number of external factors, including:

- a scarcity of cemetery resources;
- a land shortage for new graves, particularly in urban areas, driving up costs for scarce burial sites;
- a rise in demand for crematories, as a consequence of the graveyard shortage, which has driven up crematoria costs;
- changes made to the death registration process, prolonging the period between death and confirming funeral arrangements; and
- an increase in the prevalence of adult obesity, which has required funeral directors to invest in new equipment (hoists, wider trolleys and refrigerators, deeper, more expensive coffins, etc.).

Other changes to consumer behaviour which may have also impacted on increased costs include:

- longer waiting periods being sought before the funeral takes place, often resulting in additional, complex treatment of the body and longer periods of support for grieving families;
- a shift away from religious services, towards a greater use of civil celebrants, which can cost more; and
- a growing demand for bespoke, personalised and therefore more expensive services.

Finally, costs have risen as a result of third-party ancillary costs, it was suggested, including increases in cemetery interment fees and crematoria fees. All of this needed to be considered by the Scottish Government in deciding flat rate payments for FEA now and in the future, and ongoing monitoring of charges from local authorities and private companies was also needed, it was suggested.

One organisation also commented that there had been no opportunity in the consultation to comment on the removal or otherwise of the lower of the two flat rates, although there was an intention to retain that rate for those who have made certain arrangements for covering most or all of their costs:

“This section of the consultation narrative is ambiguous, and assumptions made appear to be weak; the rationale for retaining the rate is ultimately not clearly stated. This should therefore be revisited.”

The same respondent expressed disappointment that there were no questions which related to the consultation narrative on payments to cover transport costs:

“There is an assertion that this is a complex payment area and lack of clarity on how it works in practice and therefore that the emphasis of a new approach should be on better communication on entitlement. Whilst improved communications are a good intention this area should be bolstered by a commitment to review arrangements in due course, say after three years.”

It is also important to note that some strong views were expressed on behalf of those working in the industry which suggested that many of the statements in the consultation lacked robust foundations and seemed to lack substance when considering the actual contents of the draft regulations. There was a perception that some earlier contributions to the development of the draft regulations had been selectively ignored and that the Scottish Government had not consulted widely enough with those in the industry. A very specific contention was raised against the statement that there would 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. While this assertion appeared to suggest that there will be no new burdens for businesses, local government or the third sector generated by these regulations, this was queried since the ongoing review by the HM Inspector of Funeral Directors (an independent ministerial appointment) was still ongoing and no firm conclusions had been reached around funeral director regulation or licensing, the prospect of increased charges and provisions placed onto funeral directors. The findings from the HMI review need to be considered alongside the promises made in the FEA consultation, it was suggested.

There were also some questions that related to specific minority ethnic communities which the consultation had not perhaps addressed, including:

- whether the FEA could be used towards the cost of sending a body abroad;
- if extra charges for next day/weekend burials that are imposed by local authorities would be met (which was especially important for those following Islamic traditions); and
- if the premiums for single interment plots needed for Muslim burials would be covered by FEA.

A final general point was also raised that the consultation had, in parts, been difficult for some respondents/participants to understand and this pointed towards a need for careful consideration for any future FEA documents, forms, communications, etc. to be prepared in easy-read and accurately translated versions. It is also important that the Scottish Government keeps providing updates

to support workers and community champions about FEA as the system is introduced, it was suggested.

On the whole, however, respondents seemed content that the consultation was clear and that there had been scope to provide feedback on both the specific proposals and the wider policy intentions.

Impact Assessment

In developing the draft regulations, both an equalities impact assessment (EQIA) and a child rights and wellbeing impact assessment (CRWIA) were developed and all respondents were invited to comment on any aspects of the proposals which they felt may impact on individuals differentially as a result of their demographic characteristics and which had not been adequately covered by these assessments.

Q13. Do you have any additional evidence or impacts which are not covered in the EQIA or CRWIA?

Twelve respondents said that they had no additional evidence or impacts that were not covered in the EQIA or CRWIA and a further 13 gave no response. Across the 16 who did note additional evidence impacts, the topics and issues discussed were varied.

It was noted that a number of groups could be excluded or face additional barriers to access. These groups and barriers (typically identified by one or two respondents each) included:

- asylum seekers who were considered to be more likely to identify as BME and be subject to immigration controls, and therefore more likely to be disqualified from the FEA;
- those with learning disabilities who may face additional challenges in applying for qualifying DWP benefits which could restrict their FEA entitlement;
- people who have beliefs that mean that they do not use 'typical arrangements' were felt to be disadvantaged, because if the ceremony costs are included in the burial/cremation fee then it is eligible in the uncapped element, but if a cheaper burial/cremation fee is paid then the extra expenses of a venue/celebrant of a suitable faith/belief are not covered;
- homeless people, both where the nearest relative is homeless, and where the deceased was homeless and arrangements are being made by a landlord or similar; and
- those living in communities where uptake is low due to stigma attached to claiming FEA (or any benefits).

Four respondents indicated that disabled and elderly applicants with mobility limitations could face multiple challenges. Firstly, it was felt they could be placed at a disadvantage due to the increased costs of travel for these individuals. As the FEA only pays for one return trip to either arrange or attend the funeral this could deter these individuals from making a second journey and/or could place a disproportionate financial burden on those who choose to make arrangements in person rather than over the telephone. Reasonable travel costs for these individuals are likely to be higher than for those who can easily walk short distances or use public transport. Secondly, it was identified that they may be subject to additional charges when disabled guests attend funerals, such as the need to lay

planks to the graveside for wheelchair users, and respondents sought assurances that these costs would be met by FEA.

Similarly, another respondent was concerned that, for FEA to be truly accessible, it must take into account potential barriers older people may face in making claims, such as those living with long term conditions and, or disabilities. They felt it was essential to recognise that those who are appointees or who have Power of Attorney have the authority to act on behalf of the claimant, in an efficient manner. It was considered that information regarding claiming FEA should be accessible and provided in a variety of different languages and formats, such as BSL, audio, braille, and easy read versions. Other respondents also highlighted the more general importance of removing any language and communication barriers.

One respondent also felt that, while the provision of an independent advocacy service to anyone who, because of a disability, needs additional support to engage fully with the Scottish Social Security system was welcomed, they felt the remit needed to be expanded to support claimants engaging fully with the UK social security system as it relates to entitlement for devolved Scottish benefits, alongside support for those making direct claims for devolved benefits. This was considered necessary due to FEA eligibility being linked to applicant's evidencing that they are in receipt of a qualifying DWP benefit.

Two respondents discussed impacts unique to women. While they focused on issues external to the FEA (such as financial impacts as a result of changes to the age at which women are eligible to collect a pension, the gender pay gap, and career breaks to have children, etc.) they were also keen to stress the need for a financial study to prove assumptions and to avoid discrimination of women within FEA.

It was noted by one respondent that subsection (7) from the Burial and Cremation (Scotland) Act 2016 has been omitted when determining the eligible relative, i.e. 'a person's relationship with the adult is to be left out of account if (a) immediately before the adult's death the person was under 16 years of age, (b) the person does not wish or is unable to make arrangements for the remains to be buried or cremated, or (c) it is not reasonably practicable to communicate with the person in the time available.' They noted that the reason for this omission was not explained.

While not identifying issues as missing currently from the EQIA or CRWIA, or indeed as an issue for FEA more generally, one respondent highlighted the importance of ensuring that inclusive forms of address are used by the FEA process, and that a sensitive and inclusive manner was required when recording those who have had their gender reassigned. They also felt it was important to ensure that the policy/process in no way discriminates on grounds of sexual orientation. Another, meanwhile, simply stressed the need to ensure the FEA is not unintentionally discriminatory.

Finally, one respondent indicated that Social Security Scotland's FEA Advisors have an invaluable opportunity to act as a point for further support, and should be able to signpost people to services such as bereavement charities, and information and advice services.

Q14. Do you have any additional evidence or impacts which are not covered in the draft BRIA?

A partial Business and Regulatory Impact Assessment (BRIA) also accompanied the draft regulations and comments were sought any anything which may have been overlooked in this assessment.

Sixteen respondents said that they had no additional evidence or impacts that were not covered in the draft BRIA and a further 17 gave no response. Across the eight who did note additional evidence impacts, the main issue discussed was around the need to increase the £700 flat-rate contribution towards 'other costs':

"As long as there is such a significant shortfall faced by people struggling to pay for a funeral then it will be difficult, despite its best efforts, for the FEA to meet the policy objectives hoped for by the Scottish Government."

As discussed in response to earlier questions, while the proposed annual uplifts in the value of the 'other costs' to be paid as part of the FEA was welcomed, several respondents stressed that the initial rate of £700 needed to be raised from the outset to take account of the fact that this figure had been frozen since 2003. The annual uplift was considered helpful in ensuring that this funding element means it will not continue to 'lose value', but without an initial increase in this amount, it was felt that the FEA would continue to provide a shortfall in terms of covering funeral costs:

"...an above-inflation real-terms uplift would be the most effective way for the Scottish Government to meet their policy objective of 'improving the outcomes for bereaved families or friends by reducing the burden of debt they may face when paying for a funeral'."

Some respondents highlighted the impact that funeral costs, and in particular debts accrued as a result of funeral costs, can have on both bereaved families and on funeral directors, as well as potentially other suppliers. For families, impacts included both the stress of managing the costs, as well as, in some cases, utilising high cost short term credit to cover costs. It was stated that families are in the midst of grief, which is a debilitating condition in which both physical and mental impairment are common, and where emotional resilience is lowered. Two respondents highlighted that funeral costs can impact on their ability to grieve and affect their mental health, where financial pressures take precedence and where guilt is common for those forced to plan a simpler funeral than they wish. It was said that the impact can be long lasting, and can lead to long term impairment. As such, it was felt that the Scottish Government must continue to increase provision of, and support for, bereavement advice and care to mitigate these effects.

Meanwhile, it was also noted that funeral directors often pay upfront fees for the services of third-party suppliers, such as florists, musicians, celebrants, as well as burial or crematoria charges and the costs of venue hire for both the service and the wake. This means that funeral directors carry significant financial risk, and the current inadequacy of the flat-rate payment was said to often leave families struggling to meet costs and for funeral directors to have to manage debt on behalf of clients for longer, thus impacting directly on their business and on the wider local economy. Respondents noted that such difficulties can lead to funeral directors withdrawing from offering such services/cover, or requiring the provision of surety deposits, which were considered unhelpful and inappropriate at a time when families will be distressed. Any continued shortfall between the FEA and the true cost of arranging a funeral was seen to perpetuate these difficulties.

Other comments made by just one respondent each included:

- that the provision of a coffin was essential in almost all cases of a burial or cremation, and as such they felt that the costs for this item should be included in the first component of the payment along with the costs of burial/cremation and required transport;
- making clear throughout the process of implementation that the FEA is a payment and not a loan;
- those living in rural communities face lack of competition among service providers which can mean disproportionately high costs for even a basic funeral;
- that certain faith groups have funeral rites which may require additional costs; and
- that the draft regulations do nothing to address the post code lottery of burial and cremation fees charged - there remains a wide price disparity in costs across Scotland.

One respondent gave a view that the present system is untenable and remains a trying process for many families. They felt that, if it was necessary for a funding gap to remain, then the biggest improvement possible would be to give the bereaved family (and the funeral director) certainty as soon as possible, as understanding the situation and any financial limitations/constraints as soon after the date of death as possible will allow professionals to provide the best care and advice, and ultimately reduce the anxiety and pain for the bereaved.

Finally, one respondent expressed encouragement for the Scottish Government to continue to collaborate with the industry in order to deliver the FEA and to ensure that it operates effectively.

Discussion

Main Points

The consultation attracted a good level of response from a broad range of contributors. The majority of the proposals received good support, with most concerns relating to lack of clarity around the draft regulations, rather than the substantive content.

While the majority of respondents indicated that the regulations were likely to meet the policy intentions as set out, some felt that the specified flat rate payment amount was inadequate and that there would still be a gap between FEA and the actual costs incurred, meaning that funeral poverty would not be eradicated. That being said, there was support for the decision to protect the value of the payment over time.

The main areas suggested for further consideration were linked to some minority groups and those on low or no incomes but who were not eligible for or did not claim other qualifying benefits. This included the homeless, prisoners, refugees, migrants, some disabled adults, students and older adults, in particular. A flexible system which builds in provisions for exceptional circumstances, while not being open to misuse, was urged. Care must also be taken to consider ethnic and religious diversity and its impact on funeral arrangements and associated costs.

There was also some concern that the complexity of UC and wider misunderstanding of that system may impact negatively on the understanding of FEA among potential claimants and may impact on take up rates. A clear communication strategy was needed to reach as many people as possible and make even clearer the qualifying benefit criteria. This should be undertaken collaboratively with the wider support community and funeral industry partners. It also needs to be accessible and reach those for whom English is not their first language.

Everyone who provided a response agreed with proposals not to make deductions from the payment award where there are assets in the name of the child who has died. Widening and clarifying responsible person rules was also welcomed. The principle of continuing to make payments directly to funeral directors was also strongly supported, although there was some disagreement about whether this should/should not require client consent and also if persons other than funeral directors, but performing similar roles, would be covered by the existing rules.

Habitual and ordinary residence proposals were largely supported, although these terms caused some confusion among a number of respondents, and a need to accommodate exceptional circumstances was again stressed. Proposed timescales for requests and decisions around re-determinations were also broadly welcomed, with just some suggestions that more flexibility could be built in.

The impact assessments were seen as relatively comprehensive with the main areas for further consideration perhaps being to again consider particularly vulnerable groups, e.g. refugees, migrants, prisoners, disabled, older adults and the homeless.

Next Steps

The consultation findings, along with other evidence, will feed into onward policy decisions. The regulations will be revised as appropriate and laid in the Scottish Parliament for approval. They will then need to complete the parliamentary process before FEA payments can begin to be made by Social Security Scotland. The Scottish Government will use the findings from the consultation to ensure that the processes put in place to implement and administer FEA are user-friendly and meet the wider aspirations of treating all individuals with dignity, fairness and respect.

Conclusions

The majority of proposals were welcomed and were seen as a marked improvement on the existing financial support arrangements in place to help bereaved families. There seems to be a genuine desire from those working in the industry to continue to work closely with the Scottish Government to ensure efficient and effective implementation and delivery of FEA. Communication arose as a strong theme across the consultation with the need for all new changes to be clearly communicated on an ongoing basis to all those who may be supported by FEA, ensuring accessibility for all. The introduction of FEA was seen as a welcomed first step but ongoing monitoring and flexibility to test and revise the draft regulations over time to ensure that the assistance is user-led and informed by experience seems key.



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