

Consultation on the Funeral Expenditure Assistance (FEA) Regulations 2018

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

The National Association of Funeral Directors (NAFD)

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
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Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?" again with the yes or no check boxes.

- Yes
- No

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CONSULTATION QUESTIONS

Questions on Policy Proposals

Question 1

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

Yes / No

If no, please explain:

The NAFD agrees that a larger number of claimants are likely to receive Funeral Expense Assistance (FEA) than currently receive Social Fund Funeral Expenses Payments (FEP). It therefore stands to reason that the draft regulations will help improve the outcomes for some bereaved families and friends by reducing the burden of debt they may face when paying for a funeral.

The NAFD believes that the application process set out in the draft regulations represents an improvement on the existing DWP application process and welcomes the proposal to accept applications from individuals who meet the eligibility requirements without making enquiries into the personal circumstances of any other individuals of equal hierarchical standing.

The NAFD also supports the Scottish Government's commitment to develop clear communications to make it easier for applicants and the funeral industry to understand in advance if someone is eligible for a payment. However, we are concerned that the draft regulations do not go far enough to address the serious problem of applications being unexpectedly refused after the applicant has entered into a contract with a funeral director. In these circumstances, families suddenly find themselves plunged into an unexpected level of debt at an already 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.

Question 2

Can you identify any potential unintended consequences of the regulations?

Yes / No

If no, please explain:

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Question 3

Can you identify any gaps in the regulations?

Yes / No

If no, please explain:

Overall, the NAFD believes that the draft regulations are an important step forward in the provision of assistance to bereaved families in Scotland. We are pleased to see that the draft regulations are seeking to address a number of the failings of the current FEP scheme. Having identified the lack of predictability of the existing benefit, flawed eligibility criteria, and the distress caused by long processing times, the Scottish Government is seeking to address these fundamental failings of the current system.

However, 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 woefully inadequate for a funeral.

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Question 4

Is the application window for FEA clear?

Yes / No

If no, please explain:

According to the draft regulations, the time window for making an FEA application opens on the day that the person whose funeral is being arranged dies. It will be impossible to know what day this is until the person actually dies so, in practice, the window can only open once the death has occurred.

The draft regulations then provide that the application window will remain open until the day falling six months after the day on which the funeral takes place. While the various component parts of a funeral service could potentially span more than one day, for the purposes of the application window, the draft regulations define a funeral as the "burial or cremation of a deceased person, or of a still-born child...". It is therefore clear that the application window closes at the end of the day falling six months after the day of the disposal of the deceased person's remains.

Question 5

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?

Yes / No

If no, please explain:

Under the current system, where a claim is made for assistance with the funeral expenses of the last surviving parent, all children of the deceased need to be in receipt of a qualifying benefit in order for the claim to succeed. The NAFD believes this is an unintended consequence of the drafting of the existing FEP scheme, as it is clearly not fair and could not be defended as being within the aims of the benefit. The Scottish Government's proposal to use the family hierarchy list and to not ask the applicant questions about the other person's financial circumstances in order to consider whether the other family member(s) should take financial responsibility for the funeral is therefore welcomed.

The NAFD agrees that there is a need to ensure that the new system is sufficiently flexible to accommodate exceptional family circumstances but is unable to comment on the suitability of the Scottish Government's proposal on the information available. In particular, we would need to know more about the proposed timescales for making eligibility decisions in these circumstances, and how these decisions will be made. We feel that it is important that the system is as efficient and predictable as possible.

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Question 6

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?

Yes / No

If no, please explain:

We are concerned that the test for demonstrating habitual residency could prove unfairly challenging for some applicants. For example, a homeless FEA applicant who does not claim any qualifying benefits would struggle to prove habitual residence.

Question 7

We proposed 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?

Yes / No

If no, please explain:

We would suggest broadening the window from two months to four. If a person is in receipt of Universal Credit and has received an UC award of more than £0 in the previous three months, we believe that this is a strong indication that paying for a funeral could be financially challenging for them. Adopting a slightly broader view of an individual's circumstances is likely to provide a fairer outcome.

Question 8

Is the qualifying benefit / tax credit eligibility clear?

Yes / No

If no, please explain:

The test does seem clear and easy to understand. However, we would make the point that it could lead to certain individuals being unintentionally excluded from eligibility (e.g. a homeless person who does not receive any qualifying benefits).

Question 9

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.

Do you agree with this approach?

Yes / No

If no, please explain:

The NAFD supports the proposal to continue to make direct payments to funeral directors. Before this was introduced, there were examples where payments to applicants did not reach funeral directors leading to funeral directors going unpaid and taking bad debt provision. However, we do not agree that direct payment to the funeral director should be conditional on the applicant consenting. Paying funds directly to the applicant will lead to unnecessary delays and increases the risk of funeral directors going unpaid. We have no objection to funds being paid directly to the applicant where they are able to clearly demonstrate that the bill has already been paid.

Question 10

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?

Yes / No

If no, please explain:

The NAFD would support any proposal that aims to improve the situations of bereaved families.

Question 11

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. Do you think that is an acceptable time period?

Yes / No

If no, please explain:

Our understanding is that the Scottish Government's intention is to allow an individual to make an FEA application at any point within the 6-month application window. We welcome this approach as it will enable a person whose circumstances change following the death of a loved one (which is not uncommon), to make an FEA application despite not being eligible upon the precise date that their loved one passes away.

However, it is difficult to reconcile this approach with the proposal to limit the time period for making a re-determination. The consultation document makes clear that a re-determination will not be a re-examination of the original decision, but a fresh consideration of the FEA application. We would therefore expect this option to remain open to the applicant until the close of the 6-month application window, to allow for any changes to the applicant's circumstances to be taken into account.

If the closing of the redetermination 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, this would seem unjustifiably unfair.

Question 12

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

Yes / No

If no, please explain:

It is unclear why the Scottish Government's commitment to processing FEA applications within 10 working days should not extend to re-determinations.

Common sense suggests that a re-determination applicant will normally be much further along in the funeral arranging process than a first-time applicant. Therefore, if they have not already entered into a contract with a funeral director by this time, they will be under greater pressure to make an initial payment.

The NAFD believes a re-determination should be treated with at least the same level of urgency as an initial application.

Question 13

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

The NAFD is concerned that disabled and elderly applicants with mobility limitations could be placed at a disadvantage due to the increased costs of travel for these individuals.

Draft Reg. 11(7)(c) provides that the cost of only one return journey, either for arranging or attending the funeral, will be covered by FEA. This means that an applicant who wishes to attend the funeral must either pay for a separate journey to make arrangements or must do so over the phone, without the face to face support and assistance of a funeral director. We believe such support is vitally important and FEA should be structured in such a way that enables all applicants, regardless of their financial means, to make funeral arrangements and attend the funeral in person.

We are particularly concerned about the impact this limitation could have on disabled/elderly individuals with restricted mobility, for whom even short journeys can be difficult and expensive. Reasonable travel costs for these individuals are likely to be higher than for those who can easily walk short distances or use public transport. We are concerned that this could deter these individuals from making a second journey and will place a disproportionate financial burden on those who choose to make arrangements in person.

Question 14

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

We have no further comments.