

**Scottish Government Response
to the Consultation on**

Funeral Expense Assistance (Scotland) Regulations 2019

January 2019

FUNERAL EXPENSE ASSISTANCE (SCOTLAND) REGULATIONS 2019

MINISTERIAL FOREWORD



The vision for a Fairer Scotland has been at the heart of our social security policy from the very beginning. I now have the privilege as Cabinet Secretary for Social Security and Older People to lay the regulations in the Scottish Parliament for our new Funeral Expense Assistance (FEA), which has been developed with this vision in mind.

Arranging a funeral can be hard and if how to pay for it is also an issue then the experience can be overwhelming. Delivery of FEA by summer 2019 is one of 10 actions in the Scottish Government's Funeral Costs Plan. The plan aims to help people who are struggling with funeral costs and a number of actions in it involve working with partners to improve funeral affordability.

However, FEA is especially important as it will allow the Scottish Government to provide improved support directly to those who need it most at the point of bereavement. It will provide a one off payment to support people on lower incomes who are struggling to pay for a funeral with a contribution towards these costs.

I welcome the opportunity to respond to the points raised during the consultation on FEA draft regulations, which ran between 17 May and 23 August 2018, to explain the changes that have been made to the policy.

The consultation on the draft regulations for FEA built on significant engagement with stakeholders and people with experience of the current system which has been underway for over two years. Involving a wide range of organisations and individuals from the beginning means we have been able to draw on their wealth of knowledge and experience, and is in keeping with the social security principles. In particular:

- **Social security is an investment in the people of Scotland** – FEA widens eligibility in comparison with the UK Government's Funeral Expenses Payment. We will provide much needed support to people who would have received no help at all under the current system.
- **Social security is a human right** – FEA is designed to be accessible in terms of provision of information about the benefit, eligibility criteria, and the systems that will support it.
- **Respect for the dignity of individuals** – FEA is designed to reduce intrusive questioning where possible while maintaining a consistent decision making system.
- **The Scottish social security system is to contribute to reducing poverty in Scotland** - eligibility for FEA is designed to reach people in poverty and at risk of falling in to poverty.
- **The Scottish social security system is to be designed with the people of Scotland on the basis of evidence** – extensive modelling, desk research and user engagement has provided us with a good evidence base for our policy decisions.

The consultation responses have helped us to make final policy decisions and have informed the development of IT systems and processes which are needed to make FEA a reality.

I would like to thank everyone what has taken the time to submit their views in response to the recent consultation and throughout the journey to develop FEA.

A handwritten signature in black ink that reads "SSomerville".

Shirley-Anne Somerville MSP, Cabinet Secretary for Social Security and Older People

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INTRODUCTION

1. Funeral Expense Assistance (FEA) will replace the UK Government's Funeral Expenses Payment (FEP) in Scotland by summer 2019. This new benefit will deliver a one off payment to support people on certain low income benefits or tax credits who may be struggling with funeral costs. It will provide a contribution towards these costs, reducing the burden of debt they may be facing. Administration of FEA will be delivered by Social Security Scotland.
2. Delivery of FEA is one of 10 actions the Scottish Government will take during this Parliamentary term to tackle funeral poverty, as set out in our Funeral Costs Plan. FEA will allow the Scottish Government to provide better support directly to bereaved people at a very difficult time.
3. The FEA payment provides support towards:
 - **Burial or Cremation costs.** This may also include the cost of any documents that are required to allow the burial and cremation to take place.
 - **Certain travel costs;** and
 - **A flat rate payment for other expenses.** This may be used towards any other funeral expenses such as funeral director fees, a coffin, and flowers. The amount of other expenses will either be –
 - £700 for the majority of eligible applicants where the deceased had no funeral provision in place (this payment amount will apply for all FEA payments for child funerals); or
 - £120 to eligible applicants where the deceased had made provision for their funeral through a funeral plan.
4. FEA has been developed based on extensive engagement with a wide range of organisations and individuals with experience of the current system from the outset of the policy development process in March 2016. Further details on this engagement are set out in the analysis report¹ for our consultation on draft FEA regulations and on our FEA Reference Group page².
5. Drawing on this work, illustrative regulations for FEA were issued to the Social Security Committee and the Delegated Powers and Law Reform Committee of the Scottish Parliament on 30 November 2017, during the passage of the Social Security (Scotland) Bill .
6. Throughout this period we have received, and are continuing to take, views from social security Experience Panel members and members of our reference group on the design of the service to deliver FEA.
7. Building on this engagement, a 14 week consultation on the FEA draft regulations ran between 17 May and 23 August 2018 to gather further feedback on our proposals so final policy decision could be made. There were 41 separate responses from a range of organisations and individuals³.

¹ Responses to the FEA draft regulations consultation - <https://www.gov.scot/publications/funeral-expense-assistance-regulations-analysis-consultation-responses/>

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

³ Published responses to the FEA consultation - https://consult.gov.scot/social-security/funeral-expense-assistance/consultation/published_select_respondent

8. Also published along with this response to the consultation for FEA is:

- Funeral Expense Assistance Regulations (Scotland) 2019
- Business & Regulatory Impact Assessment⁴
- Equality Impact Assessment Results⁵
- Islands Impact Assessment Summary⁶
- Fairer Scotland Duty⁷

FORECAST EXPENDITURE

9. The Scottish Fiscal Commission (SFC) is responsible for producing independent forecasts for devolved social security expenditure. For FEA, the SFC published forecasts alongside the Budget on 12 December 2018⁸.

10. FEA represents an additional investment by the Scottish Government in comparison to current DWP Funeral Expenses Payment (FEP). Based on SFC forecasts, it is estimated that around 4,400 people will receive an FEA payment during the first full year of operation. This will result in expenditure of over £6 million each year, around £2 million more than for FEP.

Administration costs for FEA form part of wider financial planning for Social Security Scotland.

11. The SFC forecasts that the number of people who will be eligible for FEA will be around 40% higher than those eligible under FEP at present and initially expects that 53% of those eligible will receive an FEA payment (based on average take-up rates for FEP over the last three years).

12. Building on the Act's framework for a social security system that is founded on dignity, fairness and respect, Scottish Ministers are committed to supporting people to access their full entitlement. The Act requires Scottish Ministers to prepare a strategy to promote take up of the benefits it is administering, including FEA.

IMPLEMENTATION OF THE FUNERAL EXPENSE ASSISTANCE

13. FEA will be delivered by Social Security Scotland, an executive agency of the Scottish Government. Social Security Scotland is headquartered in Dundee and has a further site of similar size in Glasgow. Social Security Scotland is already delivering Carers Allowance Supplement and Best Start Grant (BSG). It aims to recruit a diverse workforce that represents our society and the people who will use our service.

14. Building on the systems that are already in place for BSG, the FEA service design team has been developing the business processes that will allow clients to access and receive the FEA support since the autumn of 2017 and will continue to do so in preparation for the launch of FEA by summer 2019. We have continually tested evolving designs with prospective clients to

⁴ Business & Regulatory Impact Assessment - <http://www.gov.scot/ISBN/9781787814752>

⁵ Equality Impact Assessment Results - <http://www.gov.scot/ISBN/9781787814745>

⁶ Islands Impact Assessment Summary - <http://www.gov.scot/ISBN/9781787814776>

⁷ Fairer Scotland Duty - <http://www.gov.scot/ISBN/9781787814769>

⁸ The Scottish Fiscal Commission Budget published 12 December 2018 -

<http://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts/scotlands-economic-and-fiscal-forecasts-december-2018/>

make the application process as user-friendly as possible. Insights gained from this research include how we can make the language used in the application form easy to understand and how we can format the application form, so that it meets the needs of people who have impairments. Once FEA payments are being made, we will continue to make improvements based on feedback from people who use the service.

15. The Scottish Government has committed to processing FEA applications within 10 working days of receipt of a completed application, with payment made as soon as practicable thereafter. We are therefore also looking at how we can make the application process as streamlined as possible particularly when we already have information about an applicant in the system from a previous application, or can seek this electronically. The principle is that we should place the minimum evidence requirements on clients to reduce any barriers to their application.

COMMUNICATION & ADVICE

16. The need for clear guidance for both client advisors and clients, and for effective promotion of FEA at all stages to maximise uptake has been highlighted during consultation and at meetings with stakeholders. Widespread training and awareness raising of FEA will also be required among partner agencies and advice and advocacy services to ensure that appropriate signposting is provided, and that applicants can access the necessary information and be suitably supported throughout the process. Ensuring that potential recipients clearly understand the application and appeals process is key.
17. Promotion of FEA will include marketing activity to launch the new benefit, which will be aligned with ongoing work with stakeholders to ensure that there is an awareness of the new entitlement. This communications and marketing activity will also be aligned with wider work within the Scottish Government to promote Scottish Government support available for low income persons.
18. We previously provided funding to Citizens Advice Scotland (CAS) in 2016/17 to develop training for advisors to better support people to apply for the current FEP as part of our take up activity, and to help them provide advice on long term funeral planning. Both eLearning modules have been rolled out across CAS for its 2,300 advisers and are available to anyone else with an interest through the CPAG website.
19. In addition to Social Security Scotland client advisers being able to give people comprehensive advice and support on our benefits we are also again actively engaging with the advice sector to understand the impacts of FEA, and identify how we can work in partnership to support clients. We are considering what learning options we can provide that will best meet the needs of third sector advisors and others who support people applying for FEA at the point of the launch to ensure advice services get the information they need to be able to advise clients effectively. For example, Social Security Scotland may provide a range of options such as eLearning module, a training pack, or other materials that meet stakeholders needs.

SUMMARY OF CONSULTATION FINDINGS & SG RESPONSE

Consultation Question	Response Numbers	Summary Analysis from Consultation Report	FEA Policy Response
Q1 – Do you think that the draft regulations are likely to meet the policy intent?	Yes – 29 No – 5 Not Answered - 7	Respondents were largely supportive of the policy intent, however, the main counter view expressed was that the set payment amount was not adequate when considering the actual costs of burial or cremation.	The Scottish Government has widened FEA eligibility by 40% and is investing around £2 million each year above the funding expected to transfer from the UK Government to support this. There are significant financial constraints on the Scottish Government's budget and we believe that at present, the additional investment is best used to widen the eligibility to support more people who need it and who would receive nothing from the UK Government at present, rather than increase the £700 flat rate part of the payment when the benefit is introduced. We have already committed to uprate the value of any relevant figures in the FEA regulations annually to take into account the impact of inflation. This requirement to uprate will apply to the £700 flat rate element of FEA and will mean that this will increase in 2020/21. We will continue to keep the payment amount under review in the future.
Q2 – Can you identify any potential unintended consequences of the regulations?	Yes – 15 No – 20 Not Answered - 6	<p>Key themes highlighted included:</p> <ol style="list-style-type: none"> Payment amount – it was suggested that stress and debt may continue to affect people on low income due to the gap between the payment amount and the cost of the funeral. This may include circumstances where there are differences between an early estimate and a final invoice. National Assistance Funerals – it was suggested this type of funeral may increase if families are unable to 	<p>On the issue of:</p> <ol style="list-style-type: none"> Payment amount – this is addressed at question 1. National Assistance Funerals – as set out in the Business & Regulation Impact Assessment (BRIA) the Scottish Government does not expect this model of FEA with eligibility widened by around 40% to result in additional National Assistance Funerals for local authorities. Additional travel costs for the deceased over 80kms will continue to be supported, in certain circumstances. The Scottish Government had considered replacing this with a flat rate but lack of

		<p>agree who should lead on arranging a funeral.</p> <p>3. Additional travel costs – differing views were offered here; one person suggested that uncapped additional travel could be open to misuse, while another suggested these travel costs may help those living in rural areas.</p> <p>4. Relationship to the deceased – there was some concern that complex family relationships had not been fully considered and applicants eligibility could be rejected on these grounds.</p> <p>5. Family contributions – there was concern that if it was known that a person was in receipt of FEA then family members could be less likely to help contribute to the funeral costs.</p> <p>6. Testing - FEA should be fully tested before the benefit goes live.</p>	<p>available data on the current payment meant that it was not clear whether this would disadvantage certain groups, for example people living in rural areas.</p> <p>4. Relationship to the deceased – is addressed at question 5.</p> <p>5. Family contributions – No deductions will be made from an FEA payment where there have been contributions from family, friends, or charities to help with funeral costs. Deductions will continue to be made where the person who had died has assets (for example cash in a bank account) that would be used to help meet funeral costs. Advice for applicants and advisors will be set out nearer the time of the benefit going live to ensure there is a clear understanding of this policy.</p> <p>6. Testing of FEA – We are continuing to develop the business processes which will allow people to access and receive FEA. We are continually testing and evolving designs with individuals and organisations to make the application process as user-friendly as possible. We will use this and future research as we continue to develop the process to deliver FEA.</p>
Q3 – Can you identify any gaps in the Regulations?	<p>Yes – 17</p> <p>No – 17</p> <p>Not Answered - 7</p>	<p>1. Key themes highlighted included: Payment amount - many respondents again commented on the amount of the payment. One respondent suggested that a coffin should not to be funded from the flat rate contribution for other funeral costs but instead be funded from the burial or cremation element, while another respondent suggested a new element to cover ceremonial costs.</p>	<p>On the issue of:</p> <p>1. Payment amount – this is addressed above at question 1.</p> <p>2. Payment method – this is addressed at question 9.</p> <p>3. Widening eligibility – this is addressed at question 8.</p> <p>4. Communication – building on the Social Security (Scotland) Act 2018 framework for a social security system that is founded on dignity, fairness and respect, Scottish Ministers are committed to supporting people to access their full entitlement.</p>

		<p>2. Payment method – one respondent suggested the payment should be guaranteed to funeral directors, while another respondent suggested the payment be made available into Post Office accounts and not just bank or credit union accounts.</p> <p>3. Widening eligibility – several comments were made about further widening eligibility to include other low income groups.</p> <p>4. Communication – it was highlighted that the success of FEA would be determined by people being aware of the benefit and knowing how to apply.</p> <p>5. Residency – there was a concern this does not appear to take account of an applicant who is homeless. There was also concern that if an applicant moved home to provide care and then their new residency status would affect their eligibility.</p>	<p>Scottish Ministers will be required to prepare a strategy to promote benefit take up, including for FEA.</p> <p>5. Residency - this is addressed at question 6.</p>
Q4 – Is the application window for FEA clear?	<p>Yes – 31</p> <p>No – 5</p> <p>Not Answered - 5</p>	<p>The majority of respondents felt the application window was clear, and supported the move doubling the application period to 6 months (from the 3 month period that applied until 1 April 2018). Although there were concerns about late applications, and the effectiveness of communications to raise awareness.</p>	<p>Respondents were in favour of the proposed timescale, and having considered this further, we believe that having a 6 month application period after the funeral will provide enough time for an FEA application to be submitted. However, we have responded to feedback to make provision in the regulations to allow for late award of a qualifying benefit in certain circumstances.</p> <p>As noted above, Scottish Ministers will be required to prepare a strategy to promote benefit take up, including FEA, which we expect will help people who are eligible for FEA to understand that they are entitled and apply within</p>

			the application window.
Q5 – New ‘nearest relationship test’ to the person who has died.	Yes – 28 No – 6 Not Answered -7	<p>Most respondents agreed with this proposal and suggested the relevant sections of the Burial and Cremation (Scotland) Act 2016 be transposed into the FEA regulations for clarity. 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.</p> <p>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.</p>	<p>We understand the current system asks questions that are intrusive and distressing, and where applicants may not have access to the information required. We had already proposed to use the Burial and Cremation (Scotland) Act 2016 hierarchy at s65 and 66 in response to feedback from stakeholders.</p> <p>We recognise the complex nature of family relationships highlighted in consultation responses and it is for this reason we have not included provisions in the regulations that must apply to all cases, but have instead retained flexibility to consider individual circumstance and set out the principles about how this will operate in guidance for both client advisors and clients. Only one FEA payment will be made per funeral and the regulations include provisions about how cases will be considered where multiple applications for the same deceased person.</p> <p>Based on feedback from our research with people with experience of the present system, we have changed our policy so that if the nearest relative of the person who has died is 16 or 17 years old they will be removed from the hierarchy for FEA, unless they explicitly request to take responsibility for the funeral. Removing these young people from the hierarchy will potentially allow other family members to receive an FEA payment.</p>

Q6 – Residence.	Yes – 29 No – 6 Not Answered - 6	<p>Respondents were again largely supportive of these proposals, and generally this was considered to be a reasonable approach. Some considered that the habitual residence requirement may be too restrictive, potentially excluding some individuals e.g. people who are homeless.</p>	<p>Despite broad support, on working through the practical implications, we have adapted our consultation proposals to make the process simpler and more accessible for applicants. Those on a qualifying benefit will have to demonstrate only ordinary residence in Scotland. This is a lower threshold than habitual residence and reflects the fact these applicants have already met stringent residency criteria in relation to their qualifying benefit.</p>
Q7 - UC award of more than £0 in the month before or the month in which the application is made.	Yes – 23 No – 9 Not Answered - 9	<p>The majority of respondents agreed with this proposal. However, some concerns were raised about reliance on UC, for example the fluctuation of applicants UC eligibility throughout the application period of FEA; and the confusion that may surround UC itself. As a result it was suggested that further clarity was needed to clearly communicate eligibility based on UC.</p>	<p>The policy has been updated in response to the consultation so that our proposal is set out more clearly. While we recognise that fluctuating income will have an effect on UC award levels, including the month before the application is made in eligibility, the applicant will know whether their award is more than £0 at the time when they apply and the reason for that.</p> <p>As a result, where a UC award of £0 has been made because an applicant's income is too high they would not be eligible for FEA at that time. However, we have changed our policy so that where an applicant has had their award reduced to £0 because of a sanction or debt recovery, the applicant will still qualify for FEA.</p> <p>In combination with the 6 month application window, this gives applicants the option to choose when they apply so that they can qualify, or potentially re-apply if their financial circumstances change within the application period of FEA.</p>
Q8 – Is the qualifying benefit/ tax credit eligibility clear?	Yes – 28 No – 6 Not Answered - 7	<p>The majority of the respondents agreed this proposal was clear, many also commented that eligibility should be extended further to account for</p>	<p>We have sought to design the eligibility criteria for FEA so that it reaches as many of the groups identified by stakeholders as possible. At the same time, in certain cases, we have decided not to change eligibility because</p>

		exceptional cases where FEA may be appropriate. This included to people with very low incomes but who are not in receipt of benefits, or who are in receipt of an alternative low income benefit.	it would reduce the targeting of FEA on people who are on lower incomes and / or add a disproportionate amount of cost and complexity to processing.
Q9 – Payments to funeral directors.	Yes – 34 No – 2 Not Answered - 5	The majority of respondents agreed with this proposal, including the need for applicants to have choice about who is paid. However, some responses questioned the need for the applicant to consent to the payment being made to the funeral director.	The Social Security (Scotland) Act is clear that assistance to individuals can be given in a form other than money only if the individual (or someone acting for the individual) agrees to the assistance taking that other form. The consultation paper 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. 83% of respondents supported this approach and so the Scottish Government will design a payment process for FEA on this basis. Any FEA payment being made directly to the applicant will be made payable in the format that they would normally receive their benefit payments for example, into their bank or post office account where those arrangements are already in place.
Q10 - No deductions from the payment award where there are assets in the name of the child who has died.	Yes – 35 No – 0 Not Answered - 6	All respondents who replied to this question agreed with this proposal. It was also suggested that it was important to link up policy communications, for example the removal of local authority burial and cremation charges for children aged under 18.	FEA will not make deductions where the child had assets in their own name and we have increased the upper aged limit for this to include support for funerals for children aged 16 and 17. This is consistent with the Scottish Government and COSLA agreement to remove child burial and cremation charges. As a result of not applying these deductions this will potentially increase the amount of the FEA for the funeral of a child and we are also working to streamline the application process for the death of a child, as we want to

			<p>make this as straightforward as possible for families to complete. Our intention is to support people who are already facing particularly difficult circumstances following the death of a child.</p>
<p>Q11 – We have proposed that requests for and FEA redetermination should be made within 31 calendar days of receipt of notification of the original decision.</p>	<p>Yes – 31 No – 4 Not Answered - 6</p>	<p>Timescales for proposed redetermination requests and processing were largely supported, although some would prefer a longer request period for applicants.</p>	<p>The period of 31 calendar days to request a redetermination is consistent with the timescale provided to applicant's seeking to bring an appeal to the First-tier Tribunal. We believe the concerns raised by some respondents have been partly addressed as redeterminations can be requested up to 1 year after receipt of the original determination if there are 'good reasons' for lateness. The Agency will take a supportive role during this process and will assess every request individually, on a case by case basis.</p> <p>New evidence does not need to be submitted in order to request redetermination; this will be gathered (if required) when the Agency is undertaking the redetermination. Guidance will be provided to help people better understand the redetermination process, their rights and the support the Agency will make available.</p>
<p>Q12 – We have proposed that a FEA redetermination should be processed within 15 working days of receipt of a request.</p>	<p>Yes – 30 No – 5 Not Answered - 6</p>	<p>Again, most respondents agreed with the proposed timescales to have FEA redeterminations processed within 15 working days of receipt of a request was acceptable. However, some would prefer a longer time period suggesting 20 or 31 days, while another applicant suggested this should reflect the 10 day processing of the original decision period.</p>	<p>We have clarified that the timescale will now be 16 working days and will be clearly explained to applicants as will their appeal rights which are triggered when the Agency breaches the timescale. We believe the timescales balances the operational needs of the Agency whilst ensuring applicants do not have an unduly long wait for a response. The Agency will take a proactive role in ensuring that it has the necessary evidence to make a new decision.</p>

Q13 – Do you have any additional evidence or impacts which are not covered in the EQIA or CRWIA.	Yes – 16 No – 12 Not Answered - 13	<p>Impacts were identified for the following groups of people:</p> <ol style="list-style-type: none"> 1. race - asylum seekers and individuals subject to immigration controls. 2. disability & age - <ol style="list-style-type: none"> a. physical disability or elderly who may face – <ol style="list-style-type: none"> i. additional transport costs linked to their condition; ii. recognition of appointees or Power of Attorney; iii. accessible format of information & application, e.g. BSL, audio, braille, and easy read versions; b. learning disabilities – persons may face additional challenges in applying for a qualifying DWP benefit. 3. gender – adverse impact of poverty on women. 4. gender reassignment & sexual orientation – need to ensure the policy and process in no way discriminate. 5. religion or belief - these funerals may face additional funeral costs that are to be funded from the £700 contribution for other funeral costs. <p>Other impacts -</p> <ol style="list-style-type: none"> 6. effective communication support – e.g. different languages, and different formats to engage. 7. homeless person. 8. communities with low benefit take up 	An Equality Impact Assessment has been published alongside the FEA regulations.
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		due to stigma of claiming any benefits.	
Q14 – Do you have any additional evidence or impacts which are not covered in the draft BRIA?	Yes – 8 No – 16 Not Answered - 17	<p>Impacts on businesses were identified for the BRIA as:</p> <ol style="list-style-type: none"> 1. Payment amount – the main issue raised was the concern about the level of award and the impact this has, not only on the applicant but also on the business from which the goods or services are purchased. It was again suggested that a coffin should not be funded from the flat rate contribution for other funeral costs but instead be funded from the burial or cremation element, and suggested a new element to cover ceremonial costs. 2. Burial or Cremation costs – it highlighted the draft regulations do not address the disparity in costs across Scotland. 3. Ability to shop around – it was suggested that people in rural areas face lack of competition and as result may face higher costs. 4. Clear communications for FEA – this was suggested should highlight FEA is payment and not a loan. 	A Business Regulatory Impact Assessment has been published alongside the FEA the regulations.

RESPONSE TO THE CONSULTATION – ADDITIONAL INFORMATION ON SELECTED QUESTIONS

18. This section gives additional information on the Scottish Government's response, listed by consultation question.

Question 1 - Will the draft regulations meet the policy intent.

19. FEA is one of 10 actions that the Scottish Government will take this parliamentary term to tackle funeral poverty. Through FEA the Scottish Government will provide financial support to individuals on certain low income benefits who are responsible for the funeral costs; reducing the burden of debt that they may face. We have widened eligibility by 40% compared to the current payment, to provide support to more people who are likely to struggle with funeral costs.

20. Other key improvements to FEA compared to the current payment include:

- Annual uprating of the flat rate element of the payment to take account of the impact of inflation;
- A new assessment process to determine who is responsible for the funeral. This will help people understand if they are entitled, reduce intrusive questions and assist in our work to increase take-up so that people receive the support they are entitled to; and
- Introducing a 10 working day processing time for completed applications, with payment as soon as practicable thereafter.

21. The FEA support is part of achieving the Scottish Government's National Outcomes and will specifically contribute towards the following:

- We tackle poverty by sharing opportunities, wealth and power more equally; and
- We respect, protect and fulfil human rights and live free from discrimination.

22. The FEA regulations do not make any provision in relation to the charge-setting process for cemeteries, crematoriums, funeral directors, and any other businesses that may be used by someone arranging a funeral. However, another action in the Funeral Costs Plan is to develop guidance on funeral costs and we ran a consultation on draft guidance in 2018⁹. This draft guidance sets out steps that burial authorities, cremation authorities and funeral directors can take to improve transparency and availability of funeral pricing information. These steps are designed to help consumers to understand the costs associated with making arrangements for a funeral and choose the right option for them.

23. Any action taken by a burial or cremation authority in Scotland in delivering the funeral of an individual will continue to be carried out in accordance with the relevant regulations under the Burial and Cremation (Scotland) Act 2016, and in line with any other relevant regulatory requirements. FEA will have no impact on this.

⁹ Draft Statutory Guidance on Funeral Costs Consultation - https://consult.gov.scot/social-security/statutory-guidance-on-funeral-costs/user_uploads/sct071801075201.pdf

Question 5 – New ‘nearest relationship test’ to the person who has died.

24. We have heard from people who have been bereaved about the stress that is caused by the complex eligibility criteria and application process for the current payment. To make this process less intrusive, to avoid having to make judgements about family relationships and to make it clearer in advance who is entitled to FEA, the Scottish Government has decided to use the family hierarchy lists from the Burial and Cremation (Scotland) Act 2016 s65 and 66 as part of the process to determine eligibility for FEA.
25. In addition to using the family relationship lists, a key difference from the current DWP Funeral Payment process is that if there was another family member at the same level of the list as the applicant such as another sibling, and nobody at a higher level of the hierarchy, we will not ask the applicant questions about the other person’s circumstances in order to consider whether the other family member should take financial responsibility for the funeral. Instead we will accept that the applicant is an appropriate person to take financial responsibility for the funeral.
26. Based on feedback from our research with people with experience of the present system, we have changed our policy so that if the nearest relative of the person who has died is 16 or 17 years old they will be removed from the hierarchy for FEA, unless they explicitly request to take responsibility for the funeral. We have done this for several reasons; at 16 and 17 years old they will be at the start of their career or still in education, they are likely to struggle to pay for a funeral and are less likely to be prepared to arrange a funeral. In addition, it is unlikely 16 or 17 year olds would be able to enter into a contract with a funeral director. Removing these young people from the hierarchy will potentially allow other family members to receive an FEA payment.
27. We recognise the need to have a level of flexibility to accommodate complex family relationships such as the exceptional circumstances of estrangement, or where there are relevant circumstances the applicant raises in their application. Social Security Scotland will then consider whether it is reasonable for the applicant to be the person making funeral arrangements. Guidance will be available for both client advisors and clients on this process.
28. The improved transparency of the new nearest relative test will ensure that we will reach more people with this benefit and will allow us to streamline the application process.

Question 6 – Residence.

29. Though the consultation findings stated broad support for the residency model set out in the draft regulations, we have listened carefully to the concerns that were expressed and have decided to modify our approach to make the process simpler and more accessible.
30. Applicants on a qualifying benefit, or whose partner is on a qualifying benefit, will usually have demonstrated habitual residence in the Common Travel Area and will simply require to show that they are ordinarily resident in Scotland. Ordinary residence is defined as the place where a person chooses to live for a settled purpose, even if that purpose is for a relatively short period. It is therefore simpler to administrate than habitual residence and will require claimants to provide a lower, more straightforward, standard of proof. This approach also allows Social Security Scotland to rely more heavily on the information it will already possess through access to DWP systems, again reducing the burden on applicants. In practice, this means that many applicants will be asked for little more than simple proof of address, as opposed to the more difficult and sometimes intrusive habitual residence test applied by DWP for low income benefits.

31. We have also chosen not to replicate the elements of DWP's European Economic Area right to reside test for low income benefits that serves to exclude from eligibility certain categories of EU nationals e.g. the economically inactive.
32. There is a close intersection between social security residence conditions and the immigration rules, reserved to the UK Government, that restrict access to public funds. Our policy intention is to be as generous as possible but without extending assistance to people whose ability to live and work in the UK could be jeopardised through receipt of public funds forbidden by their immigration status.

Question 8 – Is the qualifying benefit / tax credit eligibility clear?

33. Discussions with stakeholders and the consultation process have identified a number of groups who could be prioritised in FEA eligibility. We have sought to design the eligibility criteria for the FEA so that it reaches as many of these groups as possible. At the same time, in certain cases, we have decided not to change eligibility because it would reduce the focus of FEA on people who are on lower incomes and add a disproportionate amount of cost and complexity to processing. Details are set out below.
34. **Support for Mortgage Interest (SMI)** - SMI provides support for home owners to prevent repossession of their home. As of April 2018, SMI payments are no longer a benefit payment but instead a loan secured against the applicant's property. At the same time DWP made a change to eligibility for its FEP (and Sure Start Maternity Grant) to include SMI payments for applicants who are in receipt of no other qualifying benefit. Most SMI recipients will also be on a FEA qualifying benefit. However, it is possible for some individuals to be eligible for an SMI loan even if they have been refused all other qualifying benefits because their income is too high. This suggests that people in receipt of SMI only may be relatively better off than individuals eligible for FEA. On that basis, receipt of SMI alone as a qualifying criterion is not considered to help with targeting resources at those most in need. In addition, our analysis suggests that including SMI only as a qualifying benefit is unlikely to assist more than a handful of people in Scotland annually and so would add a disproportionate amount of cost and complexity to processing.
35. **Maternity Allowance (MA)** - MA is paid to people who cannot get statutory maternity pay. Recipients may be employed, self-employed or have recently stopped working. The number of people who receive MA and no other qualifying benefit is expected to be low, almost all will qualify for FEA by another route. MA is not means tested and income of spouses and partners is not taken into account, so including MA is likely to extend FEA eligibility to people on higher incomes and undermine the principle that FEA is primarily an intervention for people on low incomes. Adding a test to ensure that an MA recipient is on a low income or does not have a partner would increase administrative complexity and would be disproportionate to the numbers affected. We have therefore decided not to include MA as a qualifying criterion for FEA.
36. **Council Tax Reduction (CTR)** as a qualifying criterion - CTR is interlinked with UK benefits, in particular housing benefit and therefore has limited additional impact as a qualifying benefit, capturing a very small number of additional people. It is not a consistent proxy for low income. We have therefore decided not to include CTR as a qualifying criterion for FEA.

37. Students - Students who are aged 16 or 17 and are the nearest relative of the person who has died will be removed from the hierarchy for FEA, unless they explicitly request that they want to take responsibility for the funeral. Removing these young people from the hierarchy will potentially allow other family members to receive an FEA payment. Other students who are 18 years or over will need to be on a qualifying benefit in order to be eligible. Separate provision for students has the potential to complicate FEA processing significantly in particular around residence requirements. We therefore decided not to make separate provision for students in the eligibility for FEA.

Scottish Government

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Any enquiries regarding this publication should be sent to us at
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St Andrew's House
Edinburgh
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