

**EXPLANATORY MEMORANDUM TO THE
THE SOCIAL FUND MATERNITY AND FUNERAL EXPENSES (GENERAL)
AMENDMENT REGULATIONS 2004**

2004 No. 2536

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 ('the 1987 Regulations').
 - 2.2 Its provisions limit the scope of existing tests which restrict a person's eligibility for funeral payments. It does this by disapplying these tests in respect of close relatives or their partners who reside outside the United Kingdom.
 - 2.3 The instrument also restores the original policy intention to allow funeral payments to include a sum in respect of burial fees levied by a private grave-digger.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 This instrument is being made following the decision of a Northern Ireland Commissioner on the Simpson case in July 2001. In that case, Mr Simpson was refused a funeral payment on the grounds that there was an immediate family member living in Eire who did not receive a UK qualifying benefit, although he was in receipt of one of the equivalent benefits in Eire. The Commissioner overturned the original decision as he held that nationals of other Member States are far more likely to be affected by the regulation than UK nationals as it is more likely that they would have an immediate family member living outside the UK. He went on to determine that no satisfactory justification of the underlying policy had been made out and that the relevant provision was discriminatory on grounds of nationality.
 - 4.2 As Northern Ireland technically forms a separate jurisdiction and the Commissioner's decision was made within that jurisdiction, it does not have binding force within Great Britain; however, Northern Ireland decisions do have persuasive force within Great Britain and the

decision could be followed in preference to a contrary decision made within this jurisdiction if a tribunal were to take the view that it represented better law.

- 4.3 Regulation 3 amends regulation 7 of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 so as to add close relatives living outside the United Kingdom to the groups excluded from the “immediate family member” and “nature and extent of contact” tests (see paragraph 7.2). This is to address the obvious unfairness that those resident outside the UK are counted in the tests which operate so as to restrict entitlement to funeral payments but no consideration is given to any analogous benefit they may be receiving.
- 4.4 Regulation 4 amends regulation 7A of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 so as to provide for the necessary burial fees levied by a private grave-digger, thus correcting an anomaly and restoring the policy intention.

5. Extent

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 Not applicable

7. Policy background

- 7.1 Funeral payments help with funeral expenses where someone has good reason for taking responsibility for the funeral arrangements and has been awarded a qualifying income related benefit or tax credit.
- 7.2 Where there is no surviving partner of the deceased, two tests are applied in determining whether to award a funeral payment to the person making the claim:
 - The “immediate family member test”, where help is refused if there is a parent, son or daughter and neither they nor their partner have been awarded one of the qualifying benefits, unless they were estranged from the deceased or fall into one of the excluded groups (in the main, those under age 18, those in certain types of full-time education, in receipt of asylum support or, in some circumstances, in hospital or in prison)
 - The “nature and extent of contact test”, where help is refused if a close relative had closer contact with the deceased or had equally close contact with the deceased but neither they nor their partner had been awarded a qualifying benefit

- 7.3 In the “Simpson case” the Northern Ireland Commissioner found that there was a basic illogicality in the operation of these tests, in that those resident outside the UK are counted in the tests which operate so as to restrict entitlement to funeral payments but no consideration was given to any analogous benefit they might be receiving.
- 7.4 Investigations have confirmed that the Department cannot economically and fairly operate a scheme which attempts to draw comparisons between benefits available in this country and those elsewhere.
- 7.5 To remedy the unfairness, these regulations therefore add persons living outside the United Kingdom to the groups excluded from the immediate family member and nature and extent of contact tests. It is acknowledged that this may mean that customers with wealthy family members living abroad will also benefit from this beneficial change but this is considered to be a worthwhile risk when balanced against the benefits to those with impoverished family members living in countries perceived to be generally economically poorer than the United Kingdom.
- 7.6 The regulations also restore the original policy intention to allow such burial fees as are necessarily levied by a private grave-digger.
- 7.7 No formal consultation has taken place. The Social Security Advisory Committee did, however, consider the proposed amendments in July 2004 and agreed that they need not be formally referred to it.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business or voluntary bodies. There is a cost to the Exchequer as a result of the increased number of funeral payments. This has been estimated at £130,000 per annum.

9. Contact

- 9.1 David Wilyman at the Lone Parents and Partners Division of the Department for Work and Pensions Tel: 0113 23 24724 or e-mail: david.wilyman@jobcentreplus.gsi.gov.uk can answer any queries regarding the instrument.