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STATUTORY INSTRUMENTS

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**2005 No. 3061**

The Social Fund Maternity and Funeral  
Expenses (General) Regulations 2005

PART I  
GENERAL

**Citation and commencement**

1.—(1) These Regulations may be cited as the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 and shall come into force on 5th December 2005.

**Revocation**

2. The Regulations specified in the Schedule are revoked to the extent specified there.

**Interpretation**

3.—(1) In these Regulations—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Income Support Regulations” means the Income Support (General) Regulations 1987(1);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(2);

“absent parent” means a parent of a child who has died where—

(a) that parent was not living in the same household with the child at the date of that child’s death; and

(b) that child had his home, at the date of death, with a person who was responsible for that child for the purposes of Part IX of the Act;

“child” means a person under the age of 16 or a young person within the meaning of regulation 14 of the Income Support Regulations(3) or, as the case may be, of regulation 76 of the Jobseeker’s Allowance Regulations(4);

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act 2002(5);

“claimant” means a person claiming a social fund payment in respect of maternity or funeral expenses;

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(1) S.I.1987/1967.

(2) S.I. 1996/207.

(3) Relevant amending instruments are S.I. 1988/1445 and 2001/3070.

(4) A relevant amending instrument is S.I. 2001/3070.

(5) 2002 c. 21.

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister or sister-in-law;

“confinement” means labour resulting in the issue of a living child, or labour after 24 weeks of pregnancy resulting in the issue of a child whether alive or dead;

“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners, and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“family” means—

- (a) a couple and any children who are members of the same household and for whom at least one of the couple is responsible;
- (b) a person who is not a member of a couple and any children who are members of the same household and for whom that person is responsible;
- (c) persons who are members of a polygamous marriage who are members of the same household and any children who are also members of the same household and for whom a member of the polygamous marriage is responsible;

“family element” means—

- (a) in a case where any child in respect of whom child tax credit is payable is under the age of one year, the amount specified in regulation 7(3)(a) of the Child Tax Credit Regulations 2002(6), or
- (b) in any other case, the amount specified in regulation 7(3)(b) of those Regulations, but subject to calculations of that amount made in accordance with the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(7);

“funeral” means a burial or a cremation;

“funeral payment” has the meaning given in regulation 7(1);

“health professional” means—

- (a) a registered medical practitioner, or
- (b) a registered nurse or registered midwife;

“immediate family member” means a parent, son or daughter;

“income-based jobseeker’s allowance” has the same meaning as it has in the Jobseekers Act 1995 by virtue of section 1(4) of that Act(8);

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993(9);

(6) S.I. 2002/2007.

(7) S.I. 2002/2008.

(8) 1995 c. 18. Section 1(4) was amended by section 59 of, and paragraph 2 of Schedule 7 to, the Welfare Reform and Pensions Act 1999 (c. 30).

(9) c. 48.

“partner” means where a person—

- (a) is a member of a couple, the other member of that couple;
- (b) is married polygamously to two or more members of his household, any such member;

“person affected by a trade dispute” means a person—

- (a) to whom section 126 of the Act applies; or
- (b) to whom that section would apply if a claim for income support were made by or in respect of him;

“prescribed time for claiming” means the appropriate period during which a Sure Start Maternity Grant or, as the case may be, a funeral payment, may be claimed pursuant to regulation 19 of, and Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987(10);

“responsible person” has the meaning given in regulation 7(1);

“still-born child”, in relation to England and Wales, has the same meaning as in section 12 of the Births and Deaths Registration Act 1926(11) and, in relation to Scotland, has the same meaning as in section 56(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965(12);

“Sure Start Maternity Grant” is to be construed in accordance with regulation 5;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002.

(2) For the purposes of Part III of these Regulations, persons shall be treated as members of the same household where—

- (a) they are married to each other, or in a civil partnership with each other, and are living in the same care establishment, or
- (b) they were partners immediately before at least one of them moved permanently into such an establishment,

and at least one of them is resident in a care establishment as at the date of death of the person in respect of whom a funeral payment is claimed.

(3) In paragraph (2), “care establishment” means—

- (a) a care home,
- (b) an Abbeyfield Home, or
- (c) an independent hospital,

as defined in regulation 2(1)(13) of the Income Support Regulations.

(4) For the purposes of these Regulations—

- (a) persons are to be treated as not being members of the same household in the circumstances set out in regulation 16(2) and (3)(a), (b) and (d) of the Income Support Regulations(14) or, as the case may be, in regulation 78(2) and (3)(a) to (c) of the Jobseeker’s Allowance Regulations;
- (b) a person shall be treated as a member of a polygamous marriage where, during the subsistence of that marriage, a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy.

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(10) S.I. 1987/1968. S.I. 1997/792 is a relevant amending instrument.

(11) 1926 c. 48. Section 12 was amended by section 1 of the Still-Birth (Definition) Act 1992 (c. 29).

(12) 1965 c. 49. Section 56(1) was amended by section 1 of the Still-Birth (Definition) Act 1992.

(13) S.I. 2005/2687 is a relevant amending instrument.

(14) Regulation 16(3)(c) was revoked by regulation 2(2) of, and paragraph 1 of Schedule 1 to, S.I. 1992/3147.

**Provision against double payment**

4.—(1) Subject to paragraph (2), no Sure Start Maternity Grant shall be made under these Regulations if such a payment has already been made in respect of the child in question.

(2) Notwithstanding that a Sure Start Maternity Grant has been made to the natural mother of a child, or to one of her family, a second such payment may, subject to the following provisions of these Regulations, be made to the adoptive parents of the child in question or to persons who have been granted an order in respect of the child in question pursuant to section 30 of the Human Fertilisation and Embryology Act 1990<sup>(15)</sup> (parental orders).

(3) Subject to paragraph (4), no funeral payment shall be made under these Regulations if such a payment has already been made in respect of the funeral expenses in question or in respect of any further funeral expenses arising from the death of the same person.

(4) A further funeral payment may be made in respect of any funeral expenses arising from the death of a person in respect of which such a payment has already been made where—

- (a) the decision pursuant to which the funeral payment was awarded has been revised; and
- (b) the further amount of the award as revised, together with the amount of the funeral payment already paid in respect of the death of that person, does not exceed the amount of any funeral payment which may be awarded pursuant to regulation 9.

**PART II****PAYMENTS FOR MATERNITY EXPENSES****Entitlement**

5.—(1) Subject to regulation 6, a payment to meet maternity expenses (referred to in these Regulations as a “Sure Start Maternity Grant”) shall be made where—

- (a) the claimant or the claimant’s partner has, in respect of the date of the claim for a Sure Start Maternity Grant, been awarded—
  - (i) income support,
  - (ii) state pension credit,
  - (iii) income-based jobseeker’s allowance,
  - (iv) working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(16)</sup> is included in the award, or
  - (v) child tax credit payable at a rate higher than the family element; and
- (b) either—
  - (i) the claimant or, if the claimant is a member of a family, one of the family is pregnant or has given birth to a child or still-born child, or
  - (ii) the claimant or the claimant’s partner or both of them have adopted a child not exceeding the age of twelve months at the date of the claim, or
  - (iii) the claimant and the claimant’s spouse have been granted an order in respect of a child pursuant to section 30 of the Human Fertilisation and Embryology Act 1990 (parental orders); and

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<sup>(15)</sup> c. 37.

<sup>(16)</sup> S.I. 2002/2005.

- (c) subject to paragraph (3)—
  - (i) the claimant or partner has received advice on health and welfare matters relating to the child from a health professional, and
  - (ii) where the claim is made before the child is born, the claimant or partner has received advice on health and welfare matters relating to maternal health from a health professional; and
- (d) the claim is made within the prescribed time for claiming a Sure Start Maternity Grant.
- (2) The amount of a Sure Start Maternity Grant shall be £500 in respect of each child or still-born child.
- (3) Paragraph (1)(c)(i) shall not apply where a claim is made after the birth of a still-born child.

#### **Persons affected by a trade dispute**

- 6.—(1) Where the claimant or the claimant’s partner is a person affected by a trade dispute, a Sure Start Maternity Grant shall be made only if—
- (a) in the case where the claimant or the claimant’s partner is in receipt of income support or income-based jobseeker’s allowance, the trade dispute has, at the date of the claim for that payment, continued for not less than six weeks; or
  - (b) in the case where the claimant or the claimant’s partner is in receipt of—
    - (i) working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 is included in the award, or
    - (ii) child tax credit payable at a rate higher than the family element, the “relevant claim” was made before the beginning of the trade dispute.
- (2) In paragraph (1)(b), the relevant claim means the claim in respect of which a tax credit of the type referred to in head (i) or (ii) of that sub-paragraph was awarded.

## **PART III**

### **PAYMENTS FOR FUNERAL EXPENSES**

#### **Funeral payments: entitlement**

- 7.—(1) In these Regulations—
- (a) “funeral payment” means a social fund payment to meet funeral expenses of a deceased person;
  - (b) “responsible person” means the person who accepts responsibility for the funeral expenses.
- (2) Subject to regulation 8, a funeral payment shall be made where each of the conditions referred to in paragraphs (3) to (9) is satisfied.
- (3) The first condition is that, in respect of the date of the claim for a funeral payment, the responsible person or his partner is a person to whom paragraph (4) applies.
- (4) This paragraph applies to a person—
- (a) who has an award of—
    - (i) income support,
    - (ii) state pension credit,

- (iii) income-based jobseeker's allowance,
  - (iv) working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 is included in the award,
  - (v) child tax credit payable at a rate higher than the family element,
  - (vi) housing benefit, or
  - (vii) council tax benefit awarded by virtue of the claimant or his partner having fulfilled the conditions of entitlement specified in section 131(3) to (5) of the Act<sup>(17)</sup> (certain conditions for entitlement to council tax benefit); or
- (b) to whom section 131(6) of the Act applies (by virtue of section 131(7)) where, on a claim for council tax benefit, the conditions of entitlement specified in section 131(3) and (6) for an award of an alternative maximum council tax benefit are fulfilled.
- (5) The second condition is that the deceased was ordinarily resident in the United Kingdom at the date of his death.
- (6) The third condition is that the claim is made within the prescribed time for claiming a funeral payment.
- (7) The fourth condition is that the claimant is the responsible person or the partner of the responsible person.
- (8) The fifth condition is that—
- (a) the responsible person was the partner of the deceased at the date of death; or
  - (b) in a case where the deceased was a child and—
    - (i) there is no absent parent, or
    - (ii) there is an absent parent who, or whose partner, is a person to whom paragraph (4) applied as at the date of death,
 the responsible person was the person, or the partner of the person, responsible for that child for the purposes of Part IX of the Act as at the date of death; or
  - (c) in a case where the deceased was a still-born child, the responsible person was a parent, or the partner of a parent, of that still-born child as at the date when the child was still-born; or
  - (d) in a case where the deceased had no partner and neither sub-paragraph (b) nor (c) applies, the responsible person was an immediate family member of the deceased and it is reasonable for the responsible person to accept responsibility for those expenses; or
  - (e) in a case where the deceased had no partner and none of sub-paragraphs (b), (c) and (d) applies, the responsible person was either—
    - (i) a close relative of the deceased, or
    - (ii) a close friend of the deceased,
 and it is reasonable for the responsible person to accept responsibility for the funeral expenses.
- (9) The sixth condition is that the funeral takes place—
- (a) in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein or Norway;
  - (b) in any other case, in the United Kingdom.
- (10) This paragraph applies where the responsible person or his partner is—

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<sup>(17)</sup> Section 131 was substituted by section 103 of, and paragraph 4 of Schedule 9 to, the Local Government Finance Act 1992 (c. 14).

- (a) a worker for the purposes of Council Regulations (EEC) No. 1612/68(18) or (EEC) No. 1251/70(19);
- (b) a member of the family of a worker for the purposes of Council Regulation (EEC) No. 1612/68;
- (c) in the case of a worker who has died, a member of the family of that worker for the purposes of Council Regulation (EEC) No. 1251/70; or
- (d) a person with a right to reside in the United Kingdom pursuant to Council Directive No. 68/360/EEC(20) or No. 73/148/EEC(21).

### **Funeral payments: supplementary**

8.—(1) Subject to paragraph (2), the claimant shall not be entitled to a funeral payment where the responsible person is an immediate family member, a close relative or a close friend of the deceased and—

- (a) there are one or more immediate family members of the deceased;
- (b) one or more of those immediate family members or their partners are not persons to whom regulation 7(4) applied as at the date of death; and
- (c) any of the immediate family members referred to in sub-paragraph (b) was not estranged from the deceased at the date of his death.

(2) Paragraph (1) shall not apply to disentitle the claimant from a funeral payment where the immediate family member who meets the description specified in sub-paragraph (c) of that paragraph is at the date of death—

- (a) a person who has not attained the age of 18;
- (b) a person who has attained the age of 18 but not the age of 19 who is receiving, or treated as receiving, relevant education within the meaning of regulation 12 of the Income Support Regulations;
- (c) a person who has attained the age of 18 but not the age of 19 and who is attending a full-time course of advanced education, as defined in regulation 61 of the Income Support Regulations, or, as the case may be, a person aged 19 or over but under pensionable age who is attending a full-time course of study, as defined in that regulation, at an educational establishment;
- (d) a person in receipt of asylum support under section 95 of the Immigration and Asylum Act 1999(22);
- (e) a member of, and fully maintained by, a religious order;
- (f) being detained in a prison, remand centre or youth custody institution and either that immediate family member or his partner is a person to whom regulation 7(4) applied immediately before that immediate family member was so detained;
- (g) a person who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(23), or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(24), and either that immediate family member or his partner is a person to whom regulation 7(4) applied immediately before that immediate family member was first regarded as receiving such treatment; or

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(18) O.J. No. L257, 19.10.68, p. 2.

(19) O.J. No. L142, 1.7.70, p. 24.

(20) O.J. No. L257, 18.10.68, p. 13.

(21) O.J. No. L172, 28.6.73, p. 14.

(22) 1999 c. 33.

(23) S.I. 1975/555; the relevant amending instrument is S.I. 1992/2595.

(24) S.R. 1975 No. 109 (N.I.); the relevant amending instrument is S.R. 1992 No. 453.

- (h) a person ordinarily resident outside the United Kingdom.
- (3) Paragraphs (4) to (8) apply for the purposes of regulation 7(8)(d) and (e).
- (4) The deceased shall be treated as having had no partner where the deceased had a partner at the date of death and—
  - (a) no claim for funeral expenses is made by the partner in respect of the death of the deceased; and
  - (b) that partner dies before the date upon which the deceased's funeral takes place.
- (5) Whether it is reasonable for the responsible person to accept responsibility for meeting the expenses of a funeral shall be determined by the nature and extent of his contact with the deceased.
- (6) Paragraph (7) applies (subject to paragraph (8)) in a case where the deceased had one or more close relatives.
- (7) If, on comparing the nature and extent of any close relative's contact with the deceased and the nature and extent of the responsible person's contact with the deceased, any such close relative was—
  - (a) in closer contact with the deceased than the responsible person,
  - (b) in equally close contact with the deceased and neither that close relative nor his partner, if he has one, is a person to whom regulation 7(4) applies,
 the claimant shall not be entitled to a funeral payment.
- (8) However paragraph (7) shall not apply where the close relative who was in—
  - (a) closer contact with the deceased than the responsible person, or (as the case may be)
  - (b) equally close contact with the deceased, is at the date of death of a description specified in any of sub-paragraphs (a) to (h) of paragraph (2).
- (9) In a case where the responsible person is the partner of the person who was a close relative, immediate family member or (as the case may be) close friend of the deceased, references in the preceding provisions of this regulation, and in regulation 7(8)(d) and (e), to the responsible person are to be construed as references to the responsible person's partner.

### **Amount of funeral payment**

- 9.—(1)** A funeral payment shall be an amount sufficient to meet any relevant expenditure less any amount which falls to be deducted under regulation 10.
- (2) In paragraph (1), "relevant expenditure" means any costs to which paragraph (3) applies which fall to be met or have been met by the responsible person (or a person acting on behalf of the responsible person), inclusive of any available discount on those costs allowed by the funeral director or by any other person who arranges the funeral.
- (3) This paragraph applies to the following costs—
- (a) where the deceased is buried—
    - (i) the necessary costs of purchasing a new burial plot for the deceased, together with an exclusive right of burial in that plot;
    - (ii) the fees levied in respect of a burial by the authority or person responsible for the provision and maintenance of cemeteries for the area where the burial takes place, or the fees levied by a private grave-digger, in so far as it is necessary to incur those fees;
  - (b) where the deceased is cremated—
    - (i) the fees levied in respect of a cremation by the authority or person responsible for the provision and maintenance of crematoria for the area where the cremation takes place in so far as it is necessary to incur those fees;



- (ii) the cost of any medical references;
  - (iii) the cost of any necessary registered medical practitioner's certificates;
  - (iv) the fee payable for the removal of any device as defined for the purposes of the Active Implantable Medical Devices Regulations 1992(25) save that, where that removal is carried out by a person who is not a registered medical practitioner, no more than £20 shall be met in respect of that fee;
- (c) the cost of obtaining any documentation, production of which is necessary in order to release any assets of the deceased which may be deducted from a funeral payment pursuant to regulation 10;
- (d) where the deceased died at home or away from home and it is necessary to transport the deceased within the United Kingdom in excess of 80 kilometres (approximately 50 miles) to the funeral director's premises or to the place of rest, the reasonable cost of transport in excess of 80 kilometres;
- (e) where transport is provided by a vehicle for the coffin and bearers and by one additional vehicle, from the funeral director's premises or the place of rest to the funeral and—
- (i) the distance travelled, in the case of a funeral which consists of a burial where no costs have been incurred under sub-paragraph (a)(i) above, exceeds 80 kilometres; or
  - (ii) the distance travelled, in the case of any other funeral, necessarily exceeds 80 kilometres,
- the reasonable cost of the transport provided, other than the cost in respect of the first 80 kilometres of the distance travelled;
- (f) the necessary cost of one return journey for the responsible person, either for the purpose of making arrangements for, or for attendance at, the funeral; and
- (g) any other funeral expenses which shall not exceed £700 in any case.
- (4) Paragraphs (2) and (3) have effect subject to the following provisions.
- (5) Paragraph (3)(a) does not apply to costs in connection with burial of the deceased's ashes (where he was cremated).
- (6) All references to 80 kilometres shall be construed as applying to—
- (a) in a case to which paragraph (3)(d) applies, the combined distance from the funeral director's premises or the deceased's place of rest to the place of death and of the return journey;
  - (b) in a case to which paragraph (3)(e) applies, the combined distance from the funeral director's premises or the deceased's place of rest to the funeral and of the return journey.
- (7) The cost of items and services referred to in paragraph (3)(a), (b), (d) and (e) shall not include any element in the cost of those items and services which relates to a requirement of the deceased's religious faith.
- (8) Paragraph (3)(e)(i) includes costs only to the extent that, together with the costs referred to under paragraph (3)(a)(ii), they do not exceed the costs which would have been incurred under—
- (a) paragraph (3)(a)(i) and (ii), and
  - (b) where appropriate, paragraph (3)(e)(ii),
- if it had been necessary to purchase for the deceased a new burial plot with an exclusive right of burial.
- (9) Paragraph (3)(f) includes costs only to the extent that they do not exceed the costs which would have been incurred in respect of a return journey from the home of the responsible person to

the location where the necessary costs of a burial or, as the case may be, cremation referred to in paragraph (3)(a) or (b) would have been incurred.

(10) Where items and services have been provided on the death of the deceased under a pre-paid funeral plan or under any analogous arrangement—

- (a) no funeral payment shall be made in respect of items or services referred to in paragraph (3) which have been provided under such a plan or arrangement; and
- (b) paragraph (3)(g) shall have effect in relation to that particular claim as if for the sum “£700”, there were substituted the sum “£120”.

### **Deductions from an award of a funeral payment**

**10.**—(1) There shall be deducted from the amount of any award of funeral payment which would otherwise be payable—

- (a) the amount of any assets of the deceased which are available to the responsible person (on application or otherwise) or any other member of his family without probate or letters of administration, or (in Scotland) confirmation, having been granted;
- (b) the amount of any lump sum due to the responsible person or any other member of his family on the death of the deceased by virtue of any insurance policy, occupational pension scheme or burial club, or any analogous arrangement;
- (c) the amount of any contribution towards funeral expenses which has been received by the responsible person or any other member of his family from a charity or a relative of his or of the deceased;
- (d) the amount of any funeral grant, made out of public funds, in respect of the death of a person who was entitled to a war disablement pension;
- (e) in relation to a pre-paid funeral plan or any analogous arrangement—
  - (i) where the plan or arrangement had not been paid for in full prior to the death of the deceased, the amount of any sum payable under that plan or arrangement in order to meet the deceased’s funeral expenses;
  - (ii) where the plan or arrangement had been paid for in full prior to the death of the deceased, the amount of any allowance paid under that plan or arrangement in respect of funeral expenses.

(2) The amount of any payment made under—

- (a) the Macfarlane Trust,
- (b) the Macfarlane (Special Payments) Trust,
- (c) the Macfarlane (Special Payments) (No. 2) Trust,
- (d) the Fund,
- (e) the Eileen Trust,
- (f) the Skipton Fund, or
- (g) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions,

shall be disregarded from any deduction made under this regulation.

(3) In paragraph (2), “the Macfarlane Trust”, “the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No. 2) Trust”, “the Fund”, “the Eileen Trust” and “the Skipton Fund” shall have the same meaning as in regulation 2(1) of the Income Support Regulations.

igned by authority of the Secretary of State for Work and Pensions

2nd November 2005

*James Plaskitt*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions