

Support Notes on Commissioner's Advice Maternity Expenses

1. The regulated and discretionary parts of the Social Fund

No support notes.

2. General definition of maternity expenses

This definition of maternity expenses was formulated following conference with Counsel. The *Social Fund Maternity and Funeral Expenses (General) Regulations* do not define the term "maternity expenses". The contents of these regulations are not relevant when deciding whether an application can be met from the discretionary Social Fund.

Whether or not the statutory maternity payment has been paid and spent is not particularly relevant to the question of deciding whether an application is for maternity expenses. If, however, it is decided that the application is not for maternity expenses, then what the maternity payment was spent on may be a relevant consideration in determining priority.

The needs of the child. A baby's immediate needs are few. They include basic clothing and nappies, sleeping facilities and, if it is not being breast-fed, feeding facilities. Items which might be regarded as needs of the parent rather than the child could include maternity clothes for the mother during pregnancy, baby alarms or monitors, and items for transporting the baby such as chest harnesses or baby car seats.

Some items might be regarded as needs either of the parent or the child depending on the circumstances. Prams, for example, will not normally be maternity expenses, because they are mostly used as a means of transporting the baby around. However, prams can also be used for babies to sleep in. If the evidence shows that the pram is going to be used as the baby's only sleeping facility at the time of its birth and shortly afterwards, then it will be a maternity expense.

Necessary expenses. Items that might fall into the category of additional expenses include: chests of drawers or wardrobes for the child's clothes, or toys for the child to play with.

Immediate needs. Some items, by their nature, are unlikely to be used during the very first months of the child's life. Buggies and pushchairs, for example, are not appropriate for very young babies; high chairs are not needed until the baby can sit up and starts to eat solid food; stairgates and fireguards are unlikely to be needed until the child starts crawling. Such items would not normally be regarded as maternity items.

Other items may or may not be maternity expenses depending on the evidence about how they are to be used. Cots are a case in point. If the cot is going to be the child's only sleeping facility during the period immediately after its birth, then it will be a maternity expense. However if the evidence suggests that the child will probably sleep in a Moses basket or crib to begin

with, before moving on into the cot at a later stage, the cot will not be a maternity expense. In this case, the Moses basket or crib would be the maternity expense.

3. Further note: Timescales

When considering whether items are maternity expenses, Inspectors should focus on the current situation at the time of their decision.

Reviews conducted before the child's birth.

In these cases, any of the expenses requested may be maternity expenses. Inspectors should make their decisions according to the general principles of the Commissioner's Advice and Support Notes.

Reviews conducted after the child's birth.

If it is still shortly after the child's birth when the Inspector makes his decision, some needs may still be maternity expenses.

If it is no longer shortly after the child's birth, the application is unlikely to be for maternity expenses. This is because the immediate needs of the child at the time of its birth and shortly afterwards are now past.

This approach means that it *is* possible for an expense that was outside jurisdiction at the time of the application to come within jurisdiction as a result of the passage of time. The justification for this view comes from the wording of section 138(1) of the Act¹. This refers to the types of "payment" that can be made from the Social Fund. It does not refer to the sorts of "applications" that can be considered. An Inspector who, ten weeks after the child's birth, makes an award for baby clothes, can be confident that this "payment" will not be used for the immediate short-term needs of the child at the time of its birth or shortly afterwards. He can therefore be confident that he has not gone beyond his jurisdiction, even if the expenses were correctly classed as maternity expenses at the time of the application.

Implications for Direction 1 and Direction 2 to SFIs.

The above guidance means that an Inspector might find that a Reviewing Officer was correct, at the time, to regard certain items as maternity expenses, but nevertheless go on to change the decision under Direction 2 because, by the time he is looking at the case, it is no longer shortly after the child's birth.

However Inspectors should not be afraid to flaw Reviewing Officers' decisions if their decision is based on a wrong interpretation or application of the law. Inspectors should not prefer to use Direction 2 merely because the key issue is a controversial one, or one on which the IRS has changed its approach in the past.

¹ Or section 134(1) of the Northern Ireland Act.