Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

SOCIAL SECURITY

The Funeral Expense Assistance (Scotland) Amendment Regulations 2024

Made - - - -	*2024*
Coming into force - -	*2nd December 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 34 and 95 of the Social Security (Scotland) Act 2018(**a**) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

Citation and commencement

1. These Regulations may be cited as the Funeral Expense Assistance (Scotland) Amendment Regulations 2024 and come into force on 2 December 2024.

Amendments to the Funeral Expense Assistance (Scotland) Regulations 2019

2.—(1) The Funeral Expense Assistance (Scotland) Regulations 2019(**b**) are amended in accordance with this regulation.

(2) In regulation 2 (interpretation)—

(a) for the definition of "burial", substitute—

""burial" does not include—

(a) burial of ashes, where a person's remains have been cremated,

(b) burial of powder,",

(b) after the definition of "determination" insert—

(**a**) 2018 asp 9 ("the 2018 Act"). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to affirmative procedure by virtue of section 33(3) of that Act.

(**b**) S.S.I. 2019/292, relevantly amended by S.S.I. 2020/99, S.S.I. 2020/399, S.S.I. 2021/170 and S.S.I. 2024/105.

""disposal by way of alkaline hydrolysis" means the disposal of human remains using hot water with the addition of—

(a) potassium hydroxide,

(b) sodium hydroxide, or

(c) a mix of both components mentioned in paragraphs (a) and (b),

in a pressurised chamber in accordance with applicable laws and procedures,",

(c) for the definition of "funeral" substitute—

""funeral" means a burial, cremation or disposal by way of alkaline hydrolysis of a deceased person or still-born child,",

(d) after the definition of "partner" insert—

""powder" means the residual matter following the disposal by way of alkaline hydrolysis,".

(3) In regulation 3(5) (applications)—

(a) for "Regulations 10 and 11 describe" substitute "Regulation 10 describes",

(b) omit ", and of the estate of the deceased person".

(4) In regulation 9 (residence conditions, place of funeral and status)(**a**)—

(a) for paragraph (2)(b) substitute—

"(b) the place of the funeral is—

(i) in the United Kingdom,

(ii) in a member state of the EU, Iceland, Liechtenstein, Norway or Switzerland and paragraph (3) applies,

(iii) outside the United Kingdom and paragraph (3B) applies.",

(b) for paragraph (3) substitute—

"(3) This paragraph applies where the applicant or, where the applicant has a partner, the applicant's partner—

(a) was prior to IP completion day—

(i) a qualified person within the meaning of regulation 6(1)(b) (worker) or (c) (self-employed person) of the EEA Regulations(**b**),

(ii) a person who retained the status referred to in sub-paragraph (a) pursuant to regulation 6(2) or (4) of the EEA Regulations,

(iii) a person who is a family member of a person referred to in sub-paragraph (a) or within the meaning of regulation 7(1) of the EEA Regulations(**c**),

(iv) a person who had a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations(**d**),

(b) is a person granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act(**e**) ("the EU Settlement Scheme"),

(c) is a person who has made a valid application for indefinite or limited leave to enter, or remain in, the United Kingdom under the EU Settlement Scheme and that application is pending a final decision,

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(**a**) Regulation 9, as relevantly amended by S.S.I. 2020/399 and S.S.I. 2021/170.
(**b**) Regulation 6 was amended by S.I. 2018/801.
(**c**) Regulation 7 was amended by S.I 2019/468 and S.I. 2019/1155.
(**d**) Regulation 15 was amended by S.I. 2018/801.
(**e**) https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu, as amended from time to time.

(d) is a person who is a family member within the meaning of Article 9 of the EU withdrawal agreement.

(3A) In paragraph (3) "EEA Regulations" means the Immigration (European Economic Area) Regulations 2016(**a**), as in force on 30 December 2020.

(3B) This paragraph applies where the Scottish Ministers consider that there are exceptional circumstances which merit entitlement to assistance for a funeral outside the United Kingdom.".

(5) Regulation 11 (estate of deceased person)(**b**) is omitted.

(6) In regulation 13 (amount of funeral expense assistance)(**c**)—

(a) in paragraph (1)(a) for "(4)" substitute "(4A)",

(b) in paragraph (2)(a), for "or cremation (see paragraph 4)" substitute ", cremation (see paragraph 4) or disposal by way of alkaline hydrolysis (see paragraph (4A))",

(c) after paragraph (4), insert—

"(4A) For the disposal by way of alkaline hydrolysis, the costs are fees levied by the local authority or person responsible for the operation of disposals by way of alkaline hydrolysis in the area where the disposal takes place.",

(d) for paragraph (5) substitute—

"(5) Where the place of the funeral is outside the United Kingdom and the cost of the funeral (including transport costs) exceeds those that would have applied had the funeral taken place in the local authority area where the deceased was ordinarily resident, no assistance is to be given for those additional costs.",

(e) in paragraph (6)(a) for "pre-paid funeral plan" substitute "pre-paid funeral plan or analogous arrangement paid for in full prior to the death of the deceased",

(f) in paragraph (7)(c) for "burial or cremation" substitute "the funeral",

(g) in paragraph (8), for "burial or cremation" substitute "funeral".

(7) In regulation 14(1) (deductions from award of funeral expense assistance)(**d**)—

(a) in sub-paragraph (a), omit "which are available without confirmation having been granted, or (elsewhere in the United Kingdom) without probate or letters of administration",

(b) after sub-paragraph (c), insert—

"(d) a pre-paid funeral plan or analogous arrangement—

(i) where the plan or arrangement has not been paid in full prior to the death of the deceased, the amount of any sum payable under that plan or arrangement, or

(ii) where the plan or arrangement has been paid for in full prior to the death of the deceased, the amount of any sum payable under that plan or arrangement for the types of costs described in regulation 13".

Transitional provision – treatment of applications made but not approved when these Regulations come into force

3. Where an application for funeral expense assistance under the Funeral Expense Assistance (Scotland) Regulations 2019 ("the principal Regulations") is—

(a) made before 2 December 2024, and

(**a**) S.I. 2016/1052, as relevantly amended by S.I. 2018/801 and revoked by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c. 20) on IP completion day subject to saving provisions which are not relevant to this instrument.

(**b**) Regulation 11 was amended by S.S.I. 2020/99.

(**c**) Regulation 13 was relevantly amended by S.S.I. 2024/105 and S.S.I. 2020/99.

(**d**) Regulation 14 was amended by S.S.I. 2020/99.

(b) decided on or after that date,

the principal Regulations continue to have effect as they did immediately before 2 December 2024, despite the amendments made by these Regulations.

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Funeral Expense Assistance (Scotland) Regulations 2019 ("the principal Regulations").

The principal Regulations make provision for funeral expense assistance to help eligible persons to meet funeral expenses under section 34 of the Social Security (Scotland) Act 2018.

Regulation 2(2) provides for entitlement to assistance for funeral expenses where the deceased's body is disposed of by way of alkaline hydrolysis.

Regulation 2(4) makes changes to the conditions on entitlement to a funeral support payment when the place of the funeral is outside the United Kingdom.

Regulation 2(6) introduces costs allowable for disposal by way of alkaline hydrolysis, provides for comparison of costs in respect of funerals outside the United Kingdom and clarifies when the lower rate flat rate payment will be applied to a pre-paid funeral plan or analogous arrangement.

Regulation 2(7) makes changes to what is an available asset of the deceased and when and how a pre-paid funeral plan or analogous arrangement will be deducted under regulation 14.

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