
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No. XXX

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, or

(b) burial of powder,”

(b) after the definition of “determination” insert—

(a) 2018 asp 9 (“the 2018 Act”). The regulation-making powers conferred by the Act include the power to make different provision for different purpose by virtue of section 96(1).

(b) S.S.I. 2019/292

“disposal by way of alkaline hydrolysis” means the action of disposing of human remains using hot water with the addition of—

- (a) potassium hydroxide,
- (b) sodium hydroxide, or
- (c) a mix of both components in heads (a) and (b),
in a pressurised chamber,”

(c) for the definition of “funeral” substitute—

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

(d) after the definition of “partner” insert—

““powder” means the residual matter following the disposal of human remains by way of alkaline hydrolysis.”.

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

- (a) for “Regulations 10 and 11 describe” substitute “Regulation 10 describes”, and
- (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, or
- (iii) outside the United Kingdom and paragraph (3A) applies.”,

(b) for paragraph (3) substitute—

“(3) This paragraph applies where the applicant is, or has a partner who—

- (a) was a qualified person within the meaning of regulation 6(1)(b) (worker) or (c) (self-employed person) of the Immigration (European Economic Area) Regulations 2016(b) (the EEA Regulations) as in force on 30 December 2020,
- (b) was a person who retained the status referred to in sub-paragraph (a) pursuant to regulation 6(2) or (4) of the EEA Regulations(c) as in force on 30 December 2020,
- (c) was a person who is a family member of a person referred to in sub-paragraph (a) or (b) within the meaning of regulation 7(1) of the EEA Regulations(d) as in force on 30 December 2020,
- (d) was a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations(e), or
- (e) 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(f).

(3A) 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(g) (estate of deceased person) is omitted.

(a) Regulation 9 was relevantly amended by S.S.I. 2020/399 and S.S.I. 2021/170
(b) S.I. 2016/1052 was amended by S.I. 2018/801 and revoked by Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (c.20) on 31 December 2020 subject to saving which are not relevant to this instrument.
(c) Regulation 6 was relevantly amended by S.I. 2018/801
(d) Regulation 7 was relevantly amended by S.I. 2019/1155 and S.I. 2019/468
(e) Regulation 15 was relevantly amended by S.I. 2018/801
(f) <http://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>, as amended from time to time.
(g) Regulation 11 was relevantly amended by S.S.I. 2020/99

- (6) In regulation 13(a) (amount of funeral expense assistance)—
- (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 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) exceed 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”, and
 - (g) in paragraph (8), for “cremation” substitute “funeral”.
- (7) In regulation 14(1)(b) (deductions from award of funeral expense assistance)—
- (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) in sub-paragraph (b), after “insurance policy” insert “in the name of the deceased,”,
 - (c) in sub-paragraph (c) for “.” substitute “,” and
 - (d) 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.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Funeral Expense Assistance (Scotland) Regulations 2019 (S.S.I 2019/292) (“the principal Regulations”).

The principal Regulations made provision for funeral expense assistance to be made to help eligible persons to meet funeral expenses given by Scottish Ministers under section 34 of the Social Security (Scotland) Act 2018. These Regulations amend regulations 2, 3, 9, 11, 13 and 14 of the principal Regulations.

(a) Regulation 13 was relevantly amended by S.S.I. 2022/129 and S.S.I 2020/99
 (b) Regulation 14 was relevantly amended by S.S.I. 2020/99

Regulation 2(2) amends regulation 2 of the principal Regulations. The amendments will allow for entitlement to assistance for funeral expenses where the deceased's body is disposed of by way of alkaline hydrolysis.

Regulation 2(3) makes consequential amendments to regulation 3 of the principal Regulations.

Regulation 2(5) omits Regulation 11. The omission of regulation 11 means that the assets of the deceased will no longer be considered for the purpose of eligibility and where the deceased has assets available these will be considered and deducted under regulation 14(1) of the principal regulations.

Regulation 2(4) substitutes regulation 9(2)(b) and (3) of the principal Regulations and inserts regulation 9(3A) to the principal Regulations. The amendments make changes to the conditions relating to the place of the funeral and provides that a person will only be entitled to a funeral support payment if the place of the funeral is in the United Kingdom, or in particular circumstances, as set out in regulation 9(3) and regulation 9(3A), a funeral outside the United Kingdom. The substituted regulation 9(3) amends reference to the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") which were revoked for the purposes of the Funeral Expense (Assistance) Regulations 2019 on 31 December 2020 by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 to reference that the status will apply for persons who would fall within the meaning of the EEA Regulations as in force on 31 December 2020. The insertion of regulation 9(3A) amends regulation 9 of the principal regulations to insert an eligibility criterion relating to persons who are applying for assistance for a funeral which has had to take place outside the United Kingdom due to exceptional circumstances.

Regulation 2(6) amends regulation 13 of the principal Regulations. The amendments introduce costs allowable for a funeral which is disposal by way of alkaline hydrolysis. The amendments mean that the costs of the funeral will only be compared to the costs had the funeral taken place in the area where the deceased person was ordinarily resident when the funeral takes place outside the United Kingdom. The amendments clarify that the flat rate payment at the lower rate will only apply where the deceased left in place a fully paid pre-paid funeral plan or analogous arrangement.

Regulation 2(7) amends regulation 14 of the principal Regulations. The amendments make changes to what will be considered as an available asset of the deceased and to set out when and how a pre-paid funeral plan will be deducted under regulation 14.